

Title 7: AGRICULTURE AND ANIMALS

Chapter 103: PRODUCTS CONTROLLED

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Maine Revised Statutes
Title 7: AGRICULTURE AND ANIMALS
Chapter 103: PRODUCTS CONTROLLED

Subchapter 1: APPLES

§531. DEFINITIONS

For the purpose of this subchapter, apples packed in a closed package or container or sold at retail in bulk or in an open package or container shall be deemed to be adulterated if their measure, quality, grade or purity do not conform in each particular to the claims made upon the affixed guaranty, and shall be deemed to be misbranded:

1. Container fails to bear all statements. If the package or container, whether open or closed, fails to bear all statements required by section 534;

2. False or misleading statements. If the package or container, whether open or closed, bears any statement, design or device regarding such article or its contents which shall be false or misleading in any particular or is falsely branded in any particular.

§532. STANDARD BOX FOR APPLES

The standard box for apples shall have the following inside dimensions when measured without distention of parts: Length, 17 inches; width, 13 inches; height, 11 inches. A box having a capacity of 2,431 cubic inches shall be a lawful bushel. [1977, c. 696, §62 (AMD).]

SECTION HISTORY

1977, c. 696, §62 (AMD).

§533. STANDARD GRADES ESTABLISHED

The grades for apples recommended by the United States Department of Agriculture and recognized in the central markets of the country as government grades and such other grades or standards as may be promulgated by the commissioner under sections 441 to 447, are made the official state grades for apples of the State presented for intrastate or interstate shipment. All containers as presented for shipment whether by truck, train or boat shall have written, stamped or attached thereon the provisions required in section 534.

§534. LABELS; SALES IN BULK OR OPEN PACKAGE

Every closed package or container of apples, which is packed, sold, distributed, transported, offered or exposed for sale, distribution or transportation in the State by any person shall have affixed in a conspicuous place on the outside thereof a plainly printed statement clearly and truly stating the name and address of the owner or shipper of the apples at the time of packing, the name of the variety, the class or grade of the apples contained therein and the minimum size or the numerical count of the apples in the packages, together with the minimum volume of the apples in the container. If the apples were grown in Maine, that fact shall be plainly designated.

All apples sold, offered, exposed or advertised for sale at retail in bulk or in open packages or containers shall be plainly and conspicuously marked and identified as to variety and grade.

§535. PROHIBITIONS

No person shall, within this State, pack, sell, distribute, transport, offer or expose for sale, distribution or transportation apples which are adulterated or misbranded within the meaning of section 531.

§536. ADVERTISING

When apples are advertised for sale by radio, television, newspapers or any other medium in which the price is to be quoted, such advertisement must state the correct grade, size and variety.

No signs, flyers, advertisements or false labels shall be used to sell or offer for sale or expose for sale any apples which do not conform to the standards as established in section 533. When signs, flyers or posters are used to advertise the price of apples, the variety, size or numerical count, and grade must be shown on such signs, flyers and posters.

§537. SALE AND MOVEMENT OF APPLES

No person, firm or corporation shall within this State sell, distribute, transport, offer or expose for sale, distribution or transportation any apples that do not conform to the apple grades established in section 533. Nothing in this section shall apply to any person, firm or corporation supplying apples consigned to a processing plant for use therein. No provisions of this subchapter shall be construed to prevent a grower or shipper of apples from delivering the same to a packing house for grading or to a processing plant or cold storage plant where apples are stored and prepared for market. Apples which do not meet the established grades or classifications as provided by section 533 may be sold as culls provided the package or container is conspicuously marked with the word "Culls". The commissioner shall diligently enforce this section and in person or by deputy shall have free access, ingress and egress at all reasonable hours to any place or any building wherein apples are stored, transported, sold, offered or exposed for sale or for transportation. He may in person or by deputy upon tendering the market price take samples of apples therefrom.

§538. GUARANTY BAR TO PROSECUTION

No person shall be subject to suit under this subchapter, if he can establish a guaranty, signed by the person from whom he received any such article, to the effect that the same is not adulterated or misbranded within the meaning of section 531. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale or such article to such dealer, and in such case said party or parties shall be amenable to the suits, forfeitures and other penalties which would attach, in due course, to the dealer under this subchapter. [1977, c. 696, §63 (AMD).]

SECTION HISTORY

1977, c. 696, §63 (AMD).

§539. SALE, EXCHANGE OR TRANSPORT OF "CONTROLLED ATMOSPHERE" APPLES

A person may not sell or exchange or offer or expose for sale or exchange or transport for sale any apples represented as having been exposed to "controlled atmosphere" or "modified atmosphere," alone or with other words, or use any such term or form of words or symbols of similar import on any container or lot of apples advertised, sold, offered for sale or transported for sale within this State unless such apples have been kept in a room or storage building with not more than 5% oxygen for a minimum of 45 days, except that the commissioner, after notice and public hearing, may change the minimum number of days, as conditions in the apple industry may require. [2005, c. 512, §28 (AMD).]

If within a period of 50 consecutive days the oxygen content of a sealed storage room is at 5% or less for a total of 45 days, the room qualifies as a legal controlled atmosphere room. [2005, c. 512, §28 (AMD).]

SECTION HISTORY

1965, c. 6, (AMD). 1971, c. 13, §1 (AMD). 2005, c. 512, §28 (AMD).

§540. REGISTRATION

Any person owning or operating a controlled atmosphere room or storage building or packers or repackers of apples coming under section 539 shall register with the commissioner on a form prescribed by the commissioner. The registration period shall commence on August 1st and end on July 31st of each year. Owners or operators of such a room or storage building shall register on or before August 1st of each year.

The commissioner shall assign each approved registrant a registration number preceded by the letters "Maine C.A." This number shall be clearly marked on all containers coming under section 539 and shall be in accordance with all provisions of law pertaining to markings for apples.

§540-A. SEALING; NOTIFICATION

The commissioner shall be notified of the date of sealing of a controlled atmosphere room within 5 days of the sealing operation. [1971, c. 13, §2 (NEW).]

SECTION HISTORY

1971, c. 13, §2 (NEW).

§540-B. DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY SEAL

All controlled atmosphere storage rooms must be sealed by a Department of Agriculture, Conservation and Forestry seal affixed by an authorized representative of the department. All storages to qualify for controlled atmosphere must have been sealed by a department representative on or before November 15th of the storage year. [2005, c. 512, §29 (AMD); 2011, c. 657, Pt. W, §5 (REV).]

No seal may be broken nor any such room be entered during the 45-day required period, except as provided in section 539. Whenever such interruptions occur, the department must be notified within 48 hours after the opening of such rooms. Such entered room must thereafter be resealed by an authorized representative of the department. [2005, c. 512, §29 (AMD).]

SECTION HISTORY

1971, c. 13, §3 (NEW). 1979, c. 541, §A48 (AMD). 1979, c. 731, §19 (AMD). 2005, c. 512, §29 (AMD). 2011, c. 657, Pt. W, §5 (REV).

§541. AIR COMPONENTS DETERMINATIONS

Each owner or operator shall make the required air components determinations daily. The percent of oxygen shall be reduced to 5% within 20 days after date of sealing.

§542. RECORDS

A record on a form approved by the commissioner shall be kept at a convenient location adjacent to said room or storage building from the day of sealing to the day of opening of said room or storage building, and shall be subject to review by the commissioner or his authorized agents at any time for a period of at least one year. It shall include owner or operator's name and address, room number, date of sealing, date of opening, capacity in bushels, lot identification, number of bushels within each lot, daily air components determination recordings showing date of test, time of test, percentage of carbon dioxide, percentage of carbon dioxide and oxygen, percentage of oxygen, temperature and comments.

Each owner or operator shall submit to the department, within 20 days after date of sealing, a report in writing for each room showing room number, date of sealing and number of bushels contained therein.

§543. ACCESS

The commissioner, in person or by deputy, shall have free access, ingress and egress at all reasonable hours to any place or any building wherein apples are packed, stored, transported, sold, offered or exposed for sale or for transportation. He may, in person or by deputy, open any box or other container and may, upon tendering the market price, take samples therefrom.

§543-A. CIDER

1. Restriction on product labeled as cider. A person may not sell, advertise, offer or expose for sale any product labeled as "cider" if that product has been heated to a temperature of 155° Fahrenheit or higher for more than 10 seconds.

[1999, c. 175, §1 (NEW) .]

2. Accepted processing methods. All cider sold, advertised, offered or exposed for sale must be heat treated, treated by ultraviolet light or pressed under a state-approved hazard and critical control plan unless the cider bears a warning label in accordance with subsection 3. A state-approved hazard and critical control plan must prohibit the pressing of apples that have dropped from the trees for use in cider. For the purposes of this section, "heat treated" means heated to a temperature of 155° Fahrenheit or higher for no more than 10 seconds.

[1999, c. 175, §1 (NEW) .]

3. Warning label. A person selling, advertising, offering or exposing for sale cider that has not been processed in accordance with subsection 2 must affix a label to that product stating: "WARNING: This product has not been pasteurized. It may contain harmful bacteria that can cause serious illness in children, the elderly and persons with weakened immune systems."

[1999, c. 175, §1 (NEW) .]

4. Exemption. Hard cider as defined in Title 28-A, section 2, subsection 12-A is exempt from this section.

[1999, c. 175, §1 (NEW) .]

SECTION HISTORY

1983, c. 220, (NEW). 1999, c. 175, §1 (RPR).

§544. VIOLATIONS

Whoever adulterates or misbrands apples within the meaning of section 531, or whoever packs, sells, distributes, transports, offers or exposes for sale, distribution or transportation apples in violation of any provision of this subchapter commits a civil violation for which the following forfeitures may be adjudged:

[1977, c. 696, §64 (RPR) .]

1. First violation. For the first violation, a forfeiture not to exceed \$100; and

[1977, c. 696, §64 (NEW) .]

2. Subsequent violation. For each subsequent violation, a forfeiture not to exceed \$200.

[1977, c. 696, §64 (NEW) .]

SECTION HISTORY

1977, c. 696, §64 (RPR).

Subchapter 1-A: LABELING OF WATER

§551. DEFINITIONS

(REPEALED)

SECTION HISTORY

1979, c. 240, §§1,2 (NEW). 1985, c. 329, §1 (AMD). 2003, c. 220, §2 (RP).

§552. FOOD LABELED OR ADVERTISED AS NATURAL

(REPEALED)

SECTION HISTORY

1979, c. 240, §§1,2 (NEW). 1981, c. 314, (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 220, §3 (RP).

§553. LABELING AND ADVERTISING

(REPEALED)

SECTION HISTORY

1979, c. 240, §§1,2 (NEW). 1985, c. 329, §2 (AMD). 1989, c. 756, §§1,2 (AMD). 2003, c. 220, §4 (RP).

§554. PROHIBITION ON LABELING OR ADVERTISING AS "HEALTH FOOD"

(REPEALED)

SECTION HISTORY

1979, c. 240, §§1,2 (NEW). 2003, c. 220, §5 (RP).

§555. PROHIBITION ON CERTAIN CLAIMS OF SUPERIORITY

(REPEALED)

SECTION HISTORY

1979, c. 240, §§1,2 (NEW). 2003, c. 220, §5 (RP).

§556. CERTIFICATION

(REPEALED)

SECTION HISTORY

1979, c. 240, §§1,2 (NEW). 1989, c. 663, (AMD). 1991, c. 57, §1 (AMD). 2003, c. 220, §6 (RP).

§557. RECORDS

(REPEALED)

SECTION HISTORY

1979, c. 240, §§1,2 (NEW). 1979, c. 731, §19 (AMD). 2003, c. 220, §7 (RP).

§558. EXEMPTIONS*(REPEALED)*

SECTION HISTORY

1979, c. 240, §§1,2 (NEW). 2003, c. 220, §8 (RP).

§559. GENERAL PENALTY*(REPEALED)*

SECTION HISTORY

1979, c. 240, §§1,2 (NEW). 1991, c. 57, §2 (RP).

§560. INJUNCTIVE RELIEF*(REPEALED)*

SECTION HISTORY

1979, c. 240, §§1,2 (NEW). 2003, c. 220, §8 (RP).

§561. STORES AND RESTAURANTS*(REPEALED)*

SECTION HISTORY

1979, c. 240, §§1,2 (NEW). 2003, c. 220, §8 (RP).

§562. ENFORCEMENT OBLIGATIONS*(REPEALED)*

SECTION HISTORY

1979, c. 240, §§1,2 (NEW). 1979, c. 731, §19 (AMD). 1991, c. 57, §3 (RP).

§562-A. ENFORCEMENT OBLIGATIONS

1. Rules. The department shall adopt rules as it determines appropriate for the proper administration of this subchapter.

[1991, c. 57, §4 (NEW) .]

2. Violation notices. The department shall issue notices to bottlers and distributors alleged to have violated any provision of this subchapter. A person who violates this subchapter commits a civil violation for which a fine not to exceed \$1,000 may be adjudged. The department may also recover costs of investigation, with the limitation that the total fine and costs assessed for a violation may not exceed \$1,000.

[2003, c. 220, §9 (AMD) .]

SECTION HISTORY

1991, c. 57, §4 (NEW). 2003, c. 220, §9 (AMD).

§562-B. IDENTIFICATION OF SOURCE OF WATER SOLD IN CONTAINERS AND INTENDED FOR HUMAN CONSUMPTION

The label on water that is sold in the State in containers and that is intended for human consumption must include words that, without the use of abbreviations or acronyms, identify the name and geographic location of the water body, well or public water supply from which the water was obtained. [2003, c. 5, §1 (AMD).]

SECTION HISTORY

2001, c. 283, §1 (NEW). 2003, c. 5, §1 (AMD).

§563. WATER LABELED OR ADVERTISED AS FROM MAINE

Water may not be labeled or advertised as "Maine water" or "from Maine" if the water is not from a natural source in the State. [2001, c. 174, §2 (NEW).]

SECTION HISTORY

2001, c. 174, §2 (NEW).

Subchapter 2: ECONOMIC POISONS

§581. TITLE

(REPEALED)

SECTION HISTORY

1975, c. 382, §2 (RP).

§582. DEFINITIONS

(REPEALED)

SECTION HISTORY

1975, c. 382, §2 (RP).

§583. RULES AND REGULATIONS

(REPEALED)

SECTION HISTORY

1975, c. 382, §2 (RP).

§584. REGISTRATION

(REPEALED)

SECTION HISTORY

1975, c. 382, §2 (RP).

§585. CORRECTIONS; PROTESTS

(REPEALED)

SECTION HISTORY

1975, c. 382, §2 (RP).

§586. EXCEPTIONS; RENEWAL; FEES*(REPEALED)*

SECTION HISTORY

1975, c. 382, §2 (RP).

§587. PROHIBITIONS*(REPEALED)*

SECTION HISTORY

1975, c. 382, §2 (RP).

§588. EXEMPTIONS*(REPEALED)*

SECTION HISTORY

1975, c. 382, §2 (RP).

§589. COOPERATION WITH FEDERAL GOVERNMENT AND OTHER STATES*(REPEALED)*

SECTION HISTORY

1975, c. 382, §2 (RP).

§590. SEIZURE; FORFEITURE*(REPEALED)*

SECTION HISTORY

1975, c. 382, §2 (RP).

§591. PENALTIES*(REPEALED)*

SECTION HISTORY

1975, c. 382, §2 (RP).

§592. "STOP-SALE" ORDER*(REPEALED)*

SECTION HISTORY

1973, c. 245, (NEW). 1975, c. 382, §2 (RP).

Subchapter 2-A: MAINE PESTICIDE CONTROL ACT OF 1975**§601. TITLE**

This subchapter may be known and cited as the "Maine Pesticide Control Act of 1975." [2005, c. 620, §1 (AMD).]

SECTION HISTORY

1975, c. 382, §3 (NEW). 2005, c. 620, §1 (AMD).

§602. ENFORCING OFFICIAL

This subchapter is administered by the Board of Pesticides Control, referred to in this subchapter as the "board," established in Title 5, section 12004-D, subsection 3 and further described in Title 22, chapter 258-A. [2005, c. 620, §2 (AMD).]

SECTION HISTORY

1975, c. 382, §3 (NEW). 1979, c. 731, §19 (AMD). 1989, c. 841, §1 (AMD). 1989, c. 878, §E1 (AMD). 1993, c. 349, §22 (RPR). 2005, c. 620, §2 (AMD).

§603. DECLARATION OF PURPOSE

(REPEALED)

SECTION HISTORY

1975, c. 382, §3 (NEW). 2005, c. 382, §A4 (RP).

§604. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2005, c. 620, §3 (AMD).]

1. Active ingredient. "Active ingredient" means any ingredient that will prevent, destroy, repel, control or mitigate pests or that will act as a plant regulator, defoliant or desiccant.

[2005, c. 620, §3 (AMD) .]

2. Adulterated. "Adulterated," as applied to a pesticide, means that:

A. The pesticide's strength or purity falls below the standard of quality as expressed on the labeling under which it is sold; [2005, c. 620, §3 (NEW) .]

B. A substance has been substituted wholly or in part for the pesticide; or [2005, c. 620, §3 (NEW) .]

C. A valuable constituent of the pesticide has been wholly or in part abstracted. [2005, c. 620, §3 (NEW) .]

[2005, c. 620, §3 (AMD) .]

3. Animal. "Animal" means all vertebrate and invertebrate species, including but not limited to humans and other mammals, birds, fish and shellfish.

[2005, c. 620, §3 (AMD) .]

4. Beneficial insects. "Beneficial insects" means those insects that, during their life cycle, are effective pollinators of plants, are parasites or predators of pests or are otherwise beneficial.

[2005, c. 620, §3 (AMD) .]

5. Commissioner.

[2005, c. 620, §3 (RP) .]

6. Defoliant. "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

[1975, c. 382, §3 (NEW) .]

7. Desiccant. "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

[1975, c. 382, §3 (NEW) .]

8. Device. "Device" means any instrument or contrivance, other than a firearm, that is intended for trapping, destroying, repelling or mitigating any pest or any other form of plant or animal life, other than a human being and other than a bacterium, virus or other microorganism on or in a living human being or other living animal. "Device" does not include equipment used for the application of pesticides when sold separately from pesticides.

[2005, c. 620, §3 (AMD) .]

9. Distribute. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment or receive and, having so received, deliver or offer to deliver pesticides in this State.

[2005, c. 620, §3 (AMD) .]

10. Environment. "Environment" includes water, air and land and all plants and human beings and other animals living therein and the interrelationships that exist among these.

[2005, c. 620, §3 (AMD) .]

11. EPA. "EPA" means the United States Environmental Protection Agency.

[1975, c. 382, §3 (NEW) .]

12. FIFRA. "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act.

[1975, c. 382, §3 (NEW) .]

13. Fungi. "Fungi" means all nonchlorophyll-bearing thallophytes, that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts, including but not limited to rusts, smuts, mildews, molds, yeasts and bacteria, except those on or in living human beings or other living animals, and except those in or on processed food, beverages or pharmaceuticals.

[2005, c. 620, §3 (AMD) .]

14. Highly toxic pesticide. "Highly toxic pesticide" means any pesticide determined to be a highly toxic pesticide under FIFRA, Section 25(c)(2) or by the board under section 610, subsection 1, paragraph B.

[2005, c. 620, §3 (AMD) .]

15. Imminent hazard. "Imminent hazard" means a situation that exists when the continued use of a pesticide during the time required for cancellation proceedings pursuant to section 609 would likely result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered by the United States Secretary of the Interior under United States Public Law 91-135.

[2005, c. 620, §3 (AMD) .]

16. Inert ingredient. "Inert ingredient" means an ingredient that is not an active ingredient.

[2005, c. 620, §3 (AMD) .]

17. Ingredient statement. "Ingredient statement" means a statement of the following:

A. The name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide; and [2005, c. 620, §3 (NEW) .]

B. If the pesticide contains arsenic in any form, the percentages of total and water-soluble arsenic, each calculated as elemental arsenic. [2005, c. 620, §3 (NEW) .]

[2005, c. 620, §3 (AMD) .]

18. Insect. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising 6-legged, usually winged forms, including but not limited to beetles, bugs, bees and flies, and to other allied classes or arthropods whose members are wingless and usually have more than 6 legs, including but not limited to spiders, mites, ticks, centipedes and wood lice.

[2005, c. 620, §3 (AMD) .]

19. Label. "Label" means the written, printed or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

[1975, c. 382, §3 (NEW) .]

20. Labeling. "Labeling" means the label and all other written, printed or graphic matter:

A. Accompanying the pesticide or device at any time; or [2005, c. 620, §3 (NEW) .]

B. To which reference is made on the label or in literature accompanying the pesticide or device, except current official publications of EPA, the United States Department of Agriculture, the United States Department of the Interior, the United States Department of Health and Human Services, a state experiment station, a state agricultural college or other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides. [2005, c. 620, §3 (NEW) .]

[2005, c. 620, §3 (AMD) .]

21. Land. "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

[1975, c. 382, §3 (NEW) .]

22. Nematode. "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented roundworms with elongated fusiform or sac-like bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; nematodes may also be called nemas or eelworms.

[2005, c. 620, §3 (AMD) .]

23. Person. "Person" means any individual, partnership, association, fiduciary, corporation or any organized group of persons whether incorporated or not.

[1975, c. 382, §3 (NEW) .]

24. Pest. "Pest" means any insects, rodents, nematodes, fungi, weeds, and other forms of terrestrial or aquatic plant or animal life or viruses, bacteria or other microorganisms, except viruses, bacteria or other microorganisms on or in living human beings or other living animals, that the commissioner declares to be a pest under section 610, subsection 1, paragraph A.

[2005, c. 620, §3 (AMD) .]

25. Pesticide. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pests and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. "Pesticide" includes "highly toxic pesticide."

[2005, c. 620, §3 (AMD) .]

25-A. Plant-incorporated protectant. "Plant-incorporated protectant" means a pesticidal substance that is produced and used in a living plant through genetic engineering and the genetic material necessary for the production of the pesticidal substance.

[2007, c. 484, §1 (NEW) .]

26. Plant regulator. "Plant regulator" means any substance or mixture of substances intended through physiological action for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of plants or the produce thereof. "Plant regulator" does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments.

[2005, c. 620, §3 (AMD) .]

27. Protect health and the environment. "Protect health and the environment" means to protect against any unreasonable adverse effects on the environment.

[2005, c. 620, §3 (AMD) .]

28. Registrant. "Registrant" means a person who has registered any pesticide pursuant to the provisions of this subchapter.

[1975, c. 382, §3 (NEW) .]

29. Registration. "Registration" includes reregistration.

[2005, c. 620, §3 (AMD) .]

30. Restricted use pesticide. "Restricted use pesticide" means any pesticide or pesticide use classified for restricted use by the EPA Administrator.

[2005, c. 620, §3 (AMD) .]

31. Rodent. "Rodent" means any member of the animal group of the order rodentia, including but not limited to rats, mice, gophers, porcupines and squirrels.

[2005, c. 620, §3 (AMD) .]

32. Unreasonable adverse effects on the environment. "Unreasonable adverse effects on the environment" means any unreasonable risk to human beings or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

[2005, c. 620, §3 (AMD) .]

33. Weed. "Weed" means any plant that grows where it is not wanted.

[2005, c. 620, §3 (AMD) .]

34. Wildlife. "Wildlife" means all living things that are neither human, domesticated nor, as defined in this subchapter, pests, including but not limited to mammals, birds and aquatic life.

[1975, c. 382, §3 (NEW) .]

SECTION HISTORY

1975, c. 382, §3 (NEW). 1979, c. 731, §19 (AMD). 1989, c. 878, §E2 (AMD). 2005, c. 620, §3 (AMD). 2007, c. 484, §1 (AMD).

§605. MISBRANDED

The term "misbranded": [2005, c. 620, §4 (AMD) .]

1. False, misleading or inconspicuous labeling. As applied to any pesticide subject to this subchapter means that:

A. Its labeling bears any statement, design or graphic representation relative to the pesticide or to its ingredients that is false or misleading in any particular; [2005, c. 620, §4 (AMD) .]

B. It is an imitation of or is distributed under the name of another pesticide; or [2005, c. 620, §4 (AMD) .]

C. Any word, statement or other information required to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or graphic matter, in the labeling and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or [2005, c. 620, §4 (AMD) .]

[2005, c. 620, §4 (AMD) .]

2. Lack of certain information. As applied to any pesticide means that:

A. The labeling does not contain a statement of the use classification under which the product is registered; [2005, c. 620, §4 (AMD) .]

B. The labeling accompanying it does not contain directions for use that are necessary for effecting the purpose for which the product is intended and that, if complied with, together with any requirements imposed under FIFRA, Section 3(d), are adequate to protect health and the environment; [2005, c. 620, §4 (AMD) .]

B-1. The label does not contain a warning or caution statement that may be necessary and that, if complied with, together with any requirements imposed under FIFRA, Section 3(d), would be adequate to protect the health and environment; [2005, c. 620, §4 (NEW) .]

B-2. The label does not bear an ingredient statement on that part of the immediate container, and on the outside container and wrapper of the retail package, if there is one, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions of purchase. The pesticide is not misbranded if the ingredient statement appears

prominently on another part of the container as permitted pursuant to FIFRA, Section 2(q)(2)(A) if the size or form of the container makes it impracticable to place it on the part of the retail package that is presented or displayed under customary conditions of purchase; [2005, c. 620, §4 (NEW) .]

C. There is not affixed to its container, and to the outside container or wrapper of the retail package, if there is one, through which the required information on the immediate container cannot be clearly read, a label bearing:

- (1) The name, brand or trademark under which the pesticide is sold;
- (4) The net weight or measure of the content;
- (5) The name and address of the manufacturer, registrant or person for whom manufactured; and
- (6) The EPA registration number assigned to each establishment in which it was produced and the EPA registration number assigned to the pesticide, if required by regulations under FIFRA; [2005, c. 620, §4 (AMD) .]

D. The pesticide contains any substance or substances in quantities highly toxic to human beings unless the label bears, in addition to other label requirements:

- (1) The skull and crossbones;
- (2) The word "POISON" in red prominently displayed on a background of distinctly contrasting color; and
- (3) A statement of a practical treatment, including first aid or otherwise, in case of poisoning by the pesticide; or [2005, c. 620, §4 (AMD) .]

E. The pesticide container does not bear a registered label or the label does not contain all the information required by this subchapter or the rules adopted under this subchapter. [2005, c. 620, §4 (AMD) .]

[2005, c. 620, §4 (AMD) .]

SECTION HISTORY

1975, c. 382, §3 (NEW). 2005, c. 620, §4 (AMD).

§606. PROHIBITED ACTS

1. Unlawful distribution. A person may not distribute in the State any of the following:

A. A pesticide that has not been registered pursuant to the provisions of this subchapter; [2005, c. 620, §5 (AMD) .]

B. A pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration; a change in the labeling or formulation of a pesticide may be made within a registration period without requiring reregistration of the product if the registration is amended to reflect that change and if that change will not violate any provision of FIFRA or this subchapter; [2005, c. 620, §5 (AMD) .]

C. A pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to the container, and to the outside container or wrapper of the retail package, if there is one, through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this subchapter and rules adopted under this subchapter; [2005, c. 620, §5 (AMD) .]

D. A pesticide that has not been colored or discolored pursuant to section 610, subsection 1, paragraph D; [2005, c. 620, §5 (AMD) .]

E. A pesticide that is adulterated or misbranded or any device that is misbranded; or [2005, c. 620, §5 (AMD) .]

F. A pesticide in containers that are unsafe due to damage. [2005, c. 620, §5 (AMD) .]

[2005, c. 620, §5 (AMD) .]

2. Unlawful alteration, misuse, divulging of formulas, transportation, disposal and noncompliance.

A person may not:

A. Detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in this subchapter or rules adopted under this subchapter; [2005, c. 620, §5 (AMD) .]

A-1. Add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of this subchapter or rules adopted under this subchapter; [2005, c. 620, §5 (NEW) .]

B. Use or cause to be used any pesticide in a manner inconsistent with its labeling or with rules of the board, if those rules further restrict the uses provided on the labeling; [2005, c. 620, §5 (AMD) .]

C. Use for that person's own advantage or reveal, other than to the board or proper officials or employees of the state or federal executive agencies, to the courts of this State or of the United States in response to a subpoena, to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 607 or any information judged by the board to contain or relate to trade secrets or commercial or financial information obtained by authority of this subchapter and marked as privileged or confidential by the registrant; [2005, c. 620, §5 (AMD) .]

D. Handle, transport, store, display or distribute pesticides in such a manner as to endanger human beings or their environment or to endanger food, feed or any other products that may be transported, stored, displayed or distributed with such pesticides; [2005, c. 620, §5 (AMD) .]

E. Dispose of, discard or store any pesticides or pesticide containers in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife or beneficial insects or pollute any water supply or waterway; [2005, c. 620, §5 (AMD) .]

F. Refuse or otherwise fail to comply with the provisions of this subchapter, the rules adopted under this subchapter, or any lawful order of the board; or [2005, c. 620, §5 (AMD) .]

G. Apply pesticides in a manner inconsistent with rules for pesticide application adopted by the board. [2005, c. 620, §5 (AMD) .]

[2005, c. 620, §5 (AMD) .]

SECTION HISTORY

1975, c. 382, §3 (NEW). 1983, c. 558, §§1,2 (AMD). 1983, c. 761, §§1,2 (AMD). 1985, c. 506, §A6 (AMD). 1989, c. 878, §§E3,4 (AMD). 2005, c. 620, §5 (AMD) .

§607. REGISTRATION

1. Conditions requiring registration. A pesticide may not be distributed in this State unless it is registered with the board in accordance with the provisions of this subchapter, except that registration is not required if:

A. A pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and is used solely at that plant or warehouse as a constituent part to make a pesticide that is registered under the provisions of this subchapter; or [2005, c. 620, §6 (NEW) .]

B. A pesticide is distributed under the provisions of an experimental use permit issued by EPA.
[2005, c. 620, §6 (NEW) .]

[2005, c. 620, §6 (AMD) .]

2. Contents of statement made by applicant. The applicant for registration shall file a statement with the board, which must include:

A. The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than applicant's; [1975, c. 382, §3 (NEW) .]

B. The name of the pesticide; [1975, c. 382, §3 (NEW) .]

C. Other necessary information required by the board; and [2005, c. 620, §6 (AMD) .]

D. A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use and the use classification as provided for in FIFRA. [1975, c. 382, §3 (NEW) .]

[2005, c. 620, §6 (AMD) .]

3. Submission of formula. The board, when it determines it necessary in the administration of this subchapter, may require the submission of the complete formula of any pesticide, including the active and inert ingredients.

[2005, c. 620, §6 (AMD) .]

4. Test results. The board may require a full description of all tests made and the results of those tests on any pesticide not registered pursuant to FIFRA, Section 3 or on any pesticide on which restrictions are being considered by the board. In the case of renewal of registration, the board may require a statement only with respect to test result information that is different from that furnished when the pesticide was registered or last reregistered.

[2005, c. 620, §6 (AMD) .]

5. Power to require other information. The board may by rules adopted under section 610 require the submission of other necessary information.

[2005, c. 620, §6 (AMD) .]

5-A. Confidentiality. Notwithstanding Title 1, section 402, data submitted pursuant to subsections 3, 4 and 5 that have been determined confidential by the Administrator of the United States Environmental Protection Agency in accordance with 7 United States Code, Section 136h (2007) are confidential and may not be available for public inspection.

[2007, c. 597, §8 (AMD) .]

6. Registration fee; programs funded. The applicant desiring to register a pesticide must pay an annual registration fee of \$160 for each pesticide registered for that applicant. Annual registration periods expire on December 31st or in a manner consistent with Title 5, section 10002, whichever is later.

The board shall monitor fee revenue and expenditures under this subsection to ensure that adequate funds are available to fund board and related department programs and, to the extent funds are available, to provide grants to support stewardship programs. The board shall use funds received under this subsection to provide:

A. An annual grant of no less than \$135,000 to the University of Maine Cooperative Extension, on or about April 1st, for development and implementation of integrated pest management programs. The University of Maine may not charge overhead costs against this grant; and [2013, c. 290, §1 (NEW); 2013, c. 290, §4 (AFF).]

B. Funding for public health-related mosquito monitoring programs or other pesticide stewardship and integrated pest management programs, if designated at the discretion of the board, as funds allow after expenditures under paragraph A. The board shall seek the advice of the Integrated Pest Management Council established in section 2404 in determining the most beneficial use of the funds, if available, under this subsection. [2013, c. 290, §1 (NEW); 2013, c. 290, §4 (AFF).]

By February 15th annually, the board shall submit a report to the joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters detailing the grants funded by the fee under this subsection. The annual report must include a recommendation by the board as to whether the amount of the fee is adequate to fund the programs described in this subsection. The joint standing committee may report out a bill to the Legislature based on the board's recommendations.

[2013, c. 290, §1 (AMD); 2013, c. 290, §4 (AFF) .]

7. Renewal of registration. Registrations must be renewed annually prior to January 1st. The board shall mail forms for reregistration to registrants at least 30 days prior to the due date.

[2005, c. 620, §6 (AMD) .]

8. Approval of application for registration.

[2005, c. 620, §6 (RP) .]

8-A. Approval of application for registration. The processing of an application for registration is governed by this subsection.

A. The board shall consider the required information set forth under subsections 2, 3, 4 and 5 and shall register a pesticide if it determines that:

- (1) Its composition warrants the proposed claims for it;
- (2) Its labeling and other material required to be submitted comply with the requirements of this subchapter;
- (3) It will perform its intended function without unreasonable adverse effects on the environment;
- (4) When used in accordance with widespread and commonly recognized practice, it will not generally cause unreasonable adverse effects on the environment; and
- (5) A need for the pesticide exists. [2005, c. 620, §6 (NEW) .]

B. If, within 180 days from the date the completed application for registration is submitted, the board fails to act upon an application for registration of a pesticide that has been certified by EPA, the pesticide is deemed registered under this chapter unless the board issues a written statement containing the reasons for the failure to act upon the application. The statement of the board is deemed a refusal to register pursuant to section 609. [2005, c. 620, §6 (NEW) .]

C. Paragraphs A and B do not apply if the registrant fails to provide any information required to be submitted under this subchapter or does not provide other information requested by the board in order to determine whether the pesticide should be registered.

Nothing in this paragraph affects the rights of the board to make further inquiry regarding the registration of a pesticide or to refuse reregistration, to suspend or revoke registration or to otherwise restrict or condition the use of pesticides in order to protect public health and the environment. [2005, c. 620, §6 (NEW) .]

D. Prior to registering a pesticide for a special local need, the board shall classify the uses of the pesticide for general or restricted use in conformity with FIFRA, Section 3(d). The board may not make any lack of essentiality a criterion for denying registration of any pesticide. When 2 pesticides meet the requirements of this paragraph, the board may not register one in preference to the other. [2005, c. 620, §6 (NEW).]

E. The board may establish such other requirements by rule in accordance with section 610 as are necessary to carry out the provisions of this subsection. [2005, c. 620, §6 (NEW).]

[2005, c. 620, §6 (NEW) .]

9. Adverse environmental effects. If, at any time after the registration of a pesticide, the registrant has additional factual information regarding unreasonable adverse effects of a pesticide on the environment, the registrant shall submit that information to the board.

[2005, c. 620, §6 (AMD) .]

SECTION HISTORY

1975, c. 382, §3 (NEW). 1977, c. 694, §§52-55 (AMD). 1979, c. 644, §1 (AMD). 1981, c. 9, (AMD). 1983, c. 568, §1 (AMD). 1985, c. 592, (AMD). 1985, c. 627, §1 (AMD). 1987, c. 310, §1 (AMD). 1987, c. 723, §1 (AMD). 1989, c. 878, §E5 (AMD). 1993, c. 410, §S1 (AMD). 2001, c. 498, §1 (AMD). 2003, c. 282, §1 (AMD). 2005, c. 585, §1 (AMD). 2005, c. 620, §6 (AMD). 2007, c. 466, Pt. A, §25 (AMD). 2007, c. 597, §8 (AMD). 2013, c. 290, §1 (AMD). 2013, c. 290, §4 (AFF).

§607-A. REVIEW OR REREISTRATION

1. Review required. The board shall review chemical pesticides used in this State in accordance with the requirements of this section. The board shall select 2 pesticides for review each year with priority given to pesticides that have patterns of use in this State that differ from prevalent use patterns nationally or regionally. The board may select additional pesticides for review as the board determines need and as resources allow.

[2005, c. 620, §7 (AMD) .]

2. Review process. In cooperation with technical personnel of the Department of Environmental Protection; the Department of Inland Fisheries and Wildlife; the Department of Health and Human Services; the Department of Marine Resources; and the Department of Agriculture, Conservation and Forestry, specifically the Maine Forest Service, the board shall conduct a review consisting of the following or portions of the following as the board determines relevant:

A. An environmental risk assessment to determine the effects of pesticides on the ecosystem. This assessment is to be based on available literature. The board shall request data that it determines necessary to carry out the purpose of this chapter; or [2005, c. 620, §7 (AMD) .]

B. A health risk assessment, based on a literature search of laboratory, clinical and epidemiological data available within and without the State. The board shall request data it determines necessary to carry out the purpose of this chapter. [2005, c. 620, §7 (AMD) .]

C. [2005, c. 620, §7 (RP) .]

[2005, c. 620, §7 (AMD); 2011, c. 657, Pt. W, §5 (REV) .]

2-A. Water residue surveys. The board shall conduct a water residue survey at least once every 6 years to establish a representative sample of a number of wells or bodies of water, selected at random, in areas of possible contamination or at other locations to be described by the board, for the purpose of testing these waters and preparing a profile of the kinds and amounts of pesticides present.

[2005, c. 620, §7 (NEW) .]

3. Effect of review on reregistration. If the reviews in this section demonstrate that the impact of the pesticide on the ecosystem warrants additional health or environmental safeguards, the board shall require implementation of those safeguards prior to reregistration. The board may not refuse to renew a pesticides registration based solely on its inability to conduct a review in accordance with this section.

[2005, c. 620, §7 (AMD) .]

SECTION HISTORY

1983, c. 558, §3 (NEW). 1989, c. 878, §E6 (AMD). RR 1997, c. 2, §26 (COR). 2003, c. 689, §B6 (REV). 2005, c. 620, §7 (AMD). 2011, c. 657, Pt. W, §5 (REV).

§608. EXPERIMENTAL USE PERMITS

(REPEALED)

SECTION HISTORY

1975, c. 382, §3 (NEW). 1977, c. 694, §§56-58 (AMD). 1989, c. 878, §E7 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2005, c. 620, §8 (RP).

§609. REFUSAL TO REGISTER; CANCELLATION; SUSPENSION; LEGAL RECOURSE

1. Procedure. The following provisions govern the board when refusing to register a pesticide, refusing to renew a pesticide registration, canceling a pesticide registration or suspending a pesticide registration.

A. If it does not appear to the board that a pesticide warrants the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this subchapter or rules adopted under this subchapter, the board shall notify the applicant of the manner in which the pesticide, labeling or other material required to be submitted fails to comply with the provisions of this subchapter so as to afford the applicant an opportunity to make the necessary corrections. [2005, c. 2, §7 (COR).]

B. When the board determines that a pesticide or its labeling does not comply with the provisions of this subchapter or rules adopted under this subchapter, the board may cancel or refuse to renew the registration of a pesticide or change its classification, after notice and opportunity for hearing has been provided in a manner consistent with the Maine Administrative Procedure Act. [2005, c. 620, §9 (AMD) .]

C. When the board determines that there is an imminent hazard, it may, on its own motion, suspend the registration of a pesticide in accordance with Title 5, section 10004. [2005, c. 620, §9 (AMD) .]

D. When the board becomes cognizant of any possible hazard or violation involving a registered product, it shall cause notice of the possible hazard or violation to be delivered by registered mail, return receipt requested, to the registrant and may cancel or refuse to renew the registration of the pesticide or change its classification after notice and opportunity for hearing has been provided in a manner consistent with the Maine Administrative Procedure Act. [2005, c. 620, §9 (AMD) .]

E. [2005, c. 620, §9 (RP).]

[2005, c. 2, §7 (COR) .]

2. Federally registered pesticides. If the board determines that any federally registered pesticide, with respect to the use of such pesticide within this State, does not warrant the claims for it, or might cause unreasonable adverse effects on the environment, the board may refuse to register the pesticide as required in section 607 or, if the pesticide is registered under section 607, may cancel or suspend the registration in accordance with subsection 1. If the board believes the pesticide does not comply with the provisions of FIFRA or the regulations adopted by EPA pursuant to FIFRA, it shall advise EPA of the manner in which the pesticide, labeling or other material required to be submitted fails to comply with the provisions of FIFRA and suggest necessary corrections.

[2005, c. 620, §9 (AMD) .]

3. Person adversely affected by board action. Any person adversely affected by a final action of the board under this section may obtain judicial review thereof by filing in the District Court, within 60 days after the entry of that final action, a petition praying that the action be set aside in whole or in part. A copy of the petition must be forthwith transmitted by the clerk of the court to the board and upon receipt the board shall file in the court the record of the proceedings on which it based its final action. The court has jurisdiction to affirm or set aside the final action complained of in whole or in part. The findings of the board with respect to questions of fact must be sustained if supported by substantial evidence when considered on the record as a whole. Upon application, the court may remand the matter to the board to take further testimony if there are reasonable grounds for the failure to adduce the evidence in the prior hearing. The board may modify its findings and final action by reason of the additional evidence and shall file the additional record and any modification of the findings or final action with the clerk of the court.

[2005, c. 620, §9 (NEW) .]

SECTION HISTORY

1975, c. 382, §3 (NEW). 1977, c. 694, §§59-61 (AMD). 1989, c. 878, §E8 (AMD). RR 2005, c. 2, §7 (COR). 2005, c. 620, §9 (AMD).

§610. DETERMINATIONS; RULES; RESTRICTED USE PESTICIDES; UNIFORMITY

1. Determinations. The board may by rule:

A. Declare as a pest any form of plant or animal life, except viruses, bacteria or other microorganisms on or in living human beings or other living animals, that is injurious to health or the environment;

[2005, c. 2, §8 (COR).]

B. Determine whether pesticides registered under the authority of FIFRA, Section 24(c) are highly toxic to human beings. [2005, c. 620, §10 (AMD).]

C. Determine whether pesticides or quantities of substances contained in pesticides are injurious to the environment. The board must be guided by EPA regulations in this determination; and [2005, c. 620, §10 (AMD).]

D. Require any pesticide to be colored or discolored if it determines that such a requirement is feasible and is necessary for the protection of health and the environment. [2005, c. 620, §10 (AMD) .]

[2005, c. 2, §8 (COR) .]

2. Rule-making powers. The board may adopt other rules that it determines necessary to carry out the provisions of this subchapter. The board's rule-making authority includes, but is not limited to, rules:

- A. Providing for the collection, examination and reporting of samples of pesticides or devices; [2005 , c. 620 , §10 (AMD) .]
- B. Providing for the safe handling, transportation, storage, display, distribution and disposal of pesticides and their containers; [2005 , c. 620 , §10 (AMD) .]
- C. Establishing requirements of all pesticides required to be registered under provisions of this subchapter, provided that such rules do not impose any requirements for federally registered labels in addition to or different from those required pursuant to FIFRA; [2005 , c. 620 , §10 (AMD) .]
- D. Specifying classes of devices that are subject to the provisions of section 605, subsection 1; [2005 , c. 620 , §10 (AMD) .]
- E. Governing pesticide application, including, but not limited to, rules:
 - (1) Designed to minimize pesticide drift to the maximum extent practicable under currently available technology;
 - (2) Prescribing procedures to be used for the application of pesticides, including the time, place, manner and method of that application;
 - (3) Restricting or prohibiting the use of pesticides in designated areas or during specified periods of time; and
 - (4) Prescribing tolerance levels for pesticide residues in off-target areas; [2005 , c. 620 , §10 (NEW) .]
- F. Prescribing the submission of information necessary for the board to undertake its responsibilities under this subchapter; [2005 , c. 620 , §10 (NEW) .]
- G. Prescribing requirements as necessary to carry out the provisions of section 607; [2005 , c. 620 , §10 (NEW) .]
- H. Governing the registration and the cancellation and suspension of registration of pesticides pursuant to section 609; and [2005 , c. 620 , §10 (NEW) .]
- I. For the purpose of achieving uniformity of requirements between the states and the Federal Government, provided the rules are in conformity with the primary pesticide standards, particularly as to labeling, registration requirements and criteria for classifying pesticides for restricted use, as established by EPA or other federal or state agencies. [2005 , c. 620 , §10 (NEW) .]

[2005 , c. 620 , §10 (AMD) .]

3. Uniformity of requirements; restricted uses.

[2005 , c. 620 , §10 (RP) .]

4. Designation of rules. Rules adopted under this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A unless otherwise specified or designated in accordance with subsection 5.

[2005 , c. 620 , §10 (NEW) .]

5. Review of regulatory agenda; designation as major substantive rules. Notwithstanding Title 5, section 8060, subsection 2, the due date for the submission of a regulatory agenda by the board under section 8060 is January 15th. The board shall annually submit a regulatory agenda complying with Title 5, section 8060, subsection 1 to the joint standing committee of the Legislature having jurisdiction over pesticides regulation. The legislative committee of jurisdiction shall complete its review of the board's regulatory agenda

no later than February 15th of each year. The committee may report out legislation no later than February 20th to designate any rule on the board's regulatory agenda as a major substantive rule subject to legislative review under Title 5, chapter 375, subchapter 2-A.

[2005, c. 620, §10 (NEW) .]

6. Major substantive rules. Rules proposed for adoption by the board after July 1, 2007 that pertain to topics specified in paragraphs A to E are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. Rules in effect on July 1, 2007 that pertain to topics specified in paragraphs A to E continue in effect, except that proposed amendments to those rules are major substantive rules and must be reviewed and approved prior to final adoption in accordance with Title 5, section 8072. Rules proposed for adoption by the board after March 1, 2008 that pertain to topics specified in paragraphs F and G are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. Rules in effect on March 1, 2008 that pertain to topics specified in paragraph G continue in effect, except that proposed amendments to those rules are major substantive rules and must be reviewed and approved prior to final adoption in accordance with Title 5, section 8072. Topics governed by this subsection are:

- A. Drift from outside spraying; [2007, c. 145, §1 (NEW) .]
- B. Notification requirements for outside spraying; [2007, c. 145, §1 (NEW) .]
- C. Pesticides applications in occupied buildings; [2007, c. 145, §1 (NEW) .]
- D. A notification registry for indoor applications of pesticides; [2007, c. 484, §2 (AMD) .]
- E. Buffers from shorelines for broadcast applications of pesticides; [2007, c. 484, §2 (AMD) .]
- F. Use of organophosphate pesticides adjacent to occupied areas; and [2007, c. 484, §2 (NEW) .]
- G. Distribution and use of plant-incorporated protectants. [2007, c. 484, §2 (NEW) .]

[2007, c. 484, §2 (AMD) .]

SECTION HISTORY

1975, c. 382, §3 (NEW). 1977, c. 694, §§62,63 (AMD). 1989, c. 878, §E9 (AMD). RR 2005, c. 2, §8 (COR). 2005, c. 620, §10 (AMD). 2007, c. 145, §1 (AMD). 2007, c. 484, §2 (AMD).

§611. ENFORCEMENT

1. Board powers. Notwithstanding any other provision of law, the sampling and examination of pesticides or devices for the purpose of determining whether they comply with the requirements of this subchapter must be done under the direction of the board. The board may, upon presentation of proper identification, enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to labeled pesticides or devices packaged for distribution, may open any case, package or other container and may, upon tendering the market price, take samples for analysis. If it appears from such an examination that a pesticide or device fails to comply with the provisions of this subchapter or rules adopted under this subchapter, and the board contemplates instituting criminal proceedings against any person, the board shall cause appropriate notice to be given to that person in a manner consistent with the Maine Administrative Procedure Act. The board shall provide any person so notified an opportunity for a hearing in a manner consistent with the Maine Administrative Procedure Act's provisions governing adjudicatory proceedings. If in the opinion of the board it appears that the provisions of this subchapter or

rules adopted under this subchapter have been violated by that person, the board shall refer a copy of the results of the analysis or the examination of such pesticide or device to the attorney for the district in which the violation occurred.

[2005, c. 2, §9 (COR) .]

2. Minor violations. Nothing in this subchapter may be construed as requiring the board to report minor violations of this subchapter for prosecution or for the institution of condemnation proceedings when the board believes that the public interest will be served best by a suitable notice of warning in writing.

[2005, c. 620, §11 (AMD) .]

3. Repeated violations. The board shall record all violations of this subchapter and Title 22, chapter 258-A, including the name of the owner of the land on which the pesticides were intended to be applied, the name of the licensed pesticides applicator and the name of the person who contracted the pesticide application services. The board shall identify persons who repeatedly violate provisions relating to pesticide use and recommend to the Attorney General methods to prevent further violations by those persons.

[2005, c. 620, §11 (AMD) .]

SECTION HISTORY

1975, c. 382, §3 (NEW). 1977, c. 694, §64 (AMD). 1983, c. 558, §4 (AMD). 1989, c. 878, §E10 (AMD). RR 2005, c. 2, §9 (COR). 2005, c. 620, §11 (AMD).

§612. "STOP SALE, USE OR REMOVAL" ORDER

When the board has reasonable cause to believe a pesticide or device is being distributed, stored, transported or used in violation of any of the provisions of this subchapter or of any of the rules adopted pursuant to this subchapter, it may issue and serve a written "stop sale, use or removal" order upon the owner or custodian of that pesticide or device. If the owner or custodian is not available for service of the order, the board may attach the order to the pesticide or device and notify the owner or custodian and the registrant. The pesticide or device may not be sold, used or removed until the provisions of this subchapter have been complied with and the pesticide or device has been released in writing under conditions specified by the board or the violation has been otherwise disposed of as provided in this subchapter by a court of competent jurisdiction. The issuance of such an order is not a licensing or an adjudicatory proceeding as defined by the Maine Administrative Procedure Act. [2005, c. 620, §12 (AMD).]

SECTION HISTORY

1975, c. 382, §3 (NEW). 1977, c. 694, §65 (AMD). 1989, c. 878, §E11 (AMD). 2005, c. 620, §12 (AMD).

§613. JUDICIAL ACTION AFTER "STOP SALE, USE OR REMOVAL" ORDER

The following provisions govern judicial actions concerning a "stop sale, use or removal" order by the board. [2005, c. 620, §13 (NEW).]

1. Filing action; adjudication. After service of a "stop sale, use or removal" order is made upon any person, either that person, the registrant or the board may file an action in a court of competent jurisdiction in the district in which the violation is alleged to have occurred for an adjudication of the alleged violation. The court may issue temporary or permanent injunctions, mandatory or restraining, and any intermediate orders it determines necessary or advisable. The court may order condemnation of any pesticide or device that does not meet the requirements of this subchapter or rules adopted under this subchapter.

[2005, c. 620, §13 (AMD) .]

2. Disposition of condemned pesticide; costs and fees. If the court orders that a pesticide or device is condemned, the court shall direct that the pesticide or device be disposed of by destruction or sale. If the pesticide or device is directed to be sold, the proceeds less costs, including legal costs, must be paid to the Treasurer of State as provided in section 621. A pesticide or device may not be sold contrary to the provisions of this subchapter or rules adopted under this subchapter. When a decree of condemnation is entered against a pesticide or device, the court shall charge court costs, fees, storage and other proper expenses against the person, if any, appearing as claimant of the pesticide. The court may direct that the pesticide or device be delivered to the owner, upon payment of costs and execution and delivery of a good and sufficient bond conditioned on the pesticide or device not being disposed of unlawfully, for relabeling, reprocessing or otherwise bringing the product into compliance.

[2005, c. 620, §13 (AMD) .]

3. Award of court costs and fees.

[2005, c. 620, §13 (RP) .]

SECTION HISTORY

1975, c. 382, §3 (NEW). 1989, c. 878, §E12 (AMD). 2005, c. 620, §13 (AMD).

§614. DENIAL, SUSPENSION, REVOCATION OF LICENSE

(REPEALED)

SECTION HISTORY

1975, c. 382, §3 (NEW). 1977, c. 694, §66 (AMD). 1989, c. 878, §E13 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2005, c. 620, §14 (RP).

§615. SUBPOENAS

The board may issue subpoenas to compel the attendance of witnesses and the production of books, documents and records in the State in any hearing affecting the authority or privilege granted by a license, registration or permit issued under the provisions of this subchapter. [1989, c. 878, Pt. E, §14 (AMD) .]

SECTION HISTORY

1975, c. 382, §3 (NEW). 1989, c. 878, §E14 (AMD).

§616. PENALTIES

(REPEALED)

SECTION HISTORY

1975, c. 382, §3 (NEW). 1977, c. 696, §65 (AMD). 1989, c. 841, §2 (RP). 1989, c. 878, §E15 (AMD). 2005, c. 620, §15 (RP).

§616-A. PENALTIES

1. Informal hearing. When the staff of the board proposes that the board take action on a possible violation, the board shall notify the alleged violator before discussing the alleged violation. The alleged violator may choose to address the board and may also choose to be represented by legal counsel. This requirement does not constitute and is not subject to the same procedures as an adjudicatory hearing under the Maine Administrative Procedure Act.

[2005, c. 620, §16 (AMD) .]

2. Civil violations. The following violations are civil violations.

A. A person may not violate this subchapter or a rule adopted pursuant to this subchapter or Title 22, chapter 258-A or a rule adopted pursuant to Title 22, chapter 258-A. Except as provided in paragraph B, the following penalties apply to violations of this paragraph.

(1) A person who violates this paragraph commits a civil violation for which a fine of not more than \$1,500 may be adjudged.

(2) A person who violates this paragraph after having previously violated this paragraph within the previous 4-year period commits a civil violation for which a fine of not more than \$4,000 may be adjudged. [2003, c. 452, Pt. B, §6 (RPR); 2003, c. 452, Pt. X, §2 (AFF) .]

B. A private applicator, as defined in Title 22, section 1471-C, may not violate a rule regarding records maintained pursuant to section 606, subsection 2, paragraph G. The following penalties apply to violations of this paragraph.

(1) A person who violates this paragraph commits a civil violation for which a fine of not more than \$500 may be adjudged.

(2) A person who violates this paragraph after having previously violated this paragraph within the previous 4-year period commits a civil violation for which a fine of not more than \$1,000 may be adjudged. [2011, c. 510, §1 (AMD) .]

[2011, c. 510, §1 (AMD) .]

2-A. Criminal violation. A person may not intentionally or knowingly violate this subchapter or Title 22, chapter 258-A, a rule adopted under this subchapter or Title 22, chapter 258-A or a restriction of a registration issued pursuant to this subchapter. A person who violates this subsection commits a Class E crime. Notwithstanding Title 17-A, sections 1252 and 1301, the court may impose a sentencing alternative of a fine of not more than \$7,500 or a term of imprisonment of not more than 30 days, or both, for each violation. Prosecution under this subsection is by summons and not by warrant. A prosecution under this subsection is separate from an action brought pursuant to subsection 2.

[2003, c. 452, Pt. B, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

3. Continuation. Each day that the violation continues is considered a separate offense.

[1989, c. 841, §3 (NEW) .]

4. Exceptions.

[2003, c. 452, Pt. B, §8 (RP); 2003, c. 452, Pt. X, §2 (AFF) .]

5. Criminal violations.

[2003, c. 452, Pt. B, §8 (RP); 2003, c. 452, Pt. X, §2 (AFF) .]

6. Other relief. Notwithstanding Title 22, section 1471-D, subsections 6 to 8 and in addition to other sanctions provided under this section, the court may order that a violator obtain recertification credits through board-approved meetings or courses as a condition of retaining, maintaining or renewing a certification or license required under Title 22, chapter 258-A.

[1989, c. 841, §3 (NEW) .]

7. Considerations. In setting a penalty under this section, the court shall consider, without limitation:

- A. Prior violations by the same party; [1989, c. 841, §3 (NEW) .]
- B. The degree of harm to the public and the environment; [1989, c. 841, §3 (NEW) .]
- C. The degree of environmental damage that has not been abated or corrected; [1989, c. 841, §3 (NEW) .]
- D. The extent to which the violation continued following the board's notice to the violator; [1989, c. 841, §3 (NEW) .]
- E. The importance of deterring the same person or others from future violations; and [1989, c. 841, §3 (NEW) .]
- F. The cause and circumstances of the violation, including:
 - (1) The foreseeability of the violation;
 - (2) The standard of care exercised by the violator; and
 - (3) Whether or not the violator reported the incident to the board. [1989, c. 841, §3 (NEW) .]

[1989, c. 841, §3 (NEW) .]

8. Injunction. The board may bring an action to enjoin the violation or threatened violation of any provision of this subchapter or any rule made pursuant to this subchapter in a court of competent jurisdiction of the district in which the violation occurs or is about to occur.

[1989, c. 841, §3 (NEW) .]

9. No damages from administrative action if probable cause exists. A court may not allow the recovery of damages from administrative action taken, or for a stop sale, use or removal order, if the court finds that there was probable cause for the administrative action.

[1989, c. 841, §3 (NEW) .]

10. Sunset.

[1991, c. 829, §1 (RP) .]

SECTION HISTORY

1989, c. 841, §3 (NEW). 1991, c. 829, §1 (AMD). 2003, c. 452, §§B6-8 (AMD). 2003, c. 452, §X2 (AFF). 2005, c. 620, §16 (AMD). 2011, c. 510, §1 (AMD).

§617. EXEMPTIONS

1. Exemptions from penalties. The penalties provided for violations of section 606, subsection 1, paragraphs A, B, C, D and E do not apply to:

A. Any carrier while lawfully engaged in transporting a pesticide within this State if the carrier, upon request, permits the board to copy all records showing the transactions in and movement of the pesticides or devices; [2005, c. 620, §17 (AMD).]

B. Public officials of this State and the Federal Government while engaged in the performance of their official duties in administering state or federal pesticide laws or regulations; [1975, c. 382, §3 (NEW).]

C. The manufacturer, shipper or other distributor of a pesticide for experimental use only, provided that person holds or is covered by a valid experimental use permit issued by EPA, and provided further that the permit covers the conduct in question; or [2005, c. 620, §17 (AMD).]

D. Any person who ships a substance or mixture of substances being put through tests the purpose of which is only to determine the value of the substance or mixture for pesticide purposes or to determine its toxicity or other properties and from the use of which the user does not expect to receive any benefit in pest control. [2005, c. 620, §17 (AMD).]

[2005, c. 620, §17 (AMD).]

2. Exemption from this subchapter; pesticides for export. A pesticide or device may not be found to be in violation of this subchapter if the pesticide or device is intended solely for export to a foreign country and is prepared or packed according to the specifications or directions of the purchaser. If the pesticide or device is not so exported, all the provisions of this subchapter apply.

[2005, c. 620, §17 (AMD).]

SECTION HISTORY

1975, c. 382, §3 (NEW). 1989, c. 878, §E16 (AMD). 2005, c. 620, §17 (AMD).

§618. PUBLICATION OF INFORMATION

The board may publish, at least annually and in such form as it determines proper, results of analyses based on official samples as compared with the guaranteed analyses and information concerning the distribution of pesticides. The board may not publish individual distribution information, and that information is not a public record under Title 1, section 402. [2005, c. 620, §18 (AMD).]

SECTION HISTORY

1975, c. 382, §3 (NEW). 1989, c. 878, §E17 (AMD). 2005, c. 620, §18 (AMD).

§619. DELEGATION OF DUTIES

All authority vested in the board under this subchapter may, with like force and effort, be executed by employees of the board to whom the board from time to time delegates such authority. [2005, c. 620, §19 (AMD).]

SECTION HISTORY

1975, c. 382, §3 (NEW). 1989, c. 878, §E18 (AMD). 2005, c. 620, §19 (AMD).

§620. COOPERATION

The board may cooperate with, receive grants-in-aid from and enter into cooperative agreements with any agency of the Federal Government or of this State or its subdivisions, or with any agency of another state, in order to implement this subchapter, including but not limited to taking such actions to: [2005, c. 620, §20 (AMD).]

1. Uniformity. Secure uniformity of regulations;

[1975, c. 382, §3 (NEW) .]

2. Cooperative agreements with EPA. Prepare and submit state plans and enter into cooperative agreements with EPA to register pesticides under the authority of this subchapter and FIFRA;

[1975, c. 382, §3 (NEW) .]

3. Use of state and federal facilities. Cooperate in the enforcement of the federal pesticide control laws through the use of state or federal personnel, or both, and facilities and to implement cooperative enforcement programs including, but not limited to, the registration and inspection of establishments;

[1975, c. 382, §3 (NEW) .]

4. Contracts for monitoring pesticides. Enter into contracts for monitoring pesticides for the national plan; and

[1975, c. 382, §3 (NEW) .]

5. Preparation of state plans. Prepare and submit state plans to meet federal certification standards for issuing experimental use permits.

[1975, c. 382, §3 (NEW) .]

SECTION HISTORY

1975, c. 382, §3 (NEW). 1989, c. 878, §E19 (AMD). 2005, c. 620, §20 (AMD).

§621. DISPOSITION OF FUNDS

All money received by the board under this subchapter must be deposited in the State Treasury to the credit of a special fund to be used for carrying out the provisions of this subchapter and Title 22, chapter 258-A, Board of Pesticides Control, and for such other expenses related to insect and pest management as provided by law. Positions that are allocated to the fund but that do not perform functions specifically assigned to the board in this subchapter and Title 22, chapter 258-A remain under supervision and management of the Department of Agriculture, Conservation and Forestry. [2005, c. 620, §21 (AMD); 2011, c. 657, Pt. W, §5 (REV).]

The State Controller is authorized to advance up to \$500,000 from the Board of Pesticides Control account to the Animal Welfare Fund during any state fiscal year if requested in writing by the commissioner. The funds must be used to meet expenditures of the animal welfare program within the department. The funds must be returned to the account before the close of the state fiscal year in which the advance was made. [2007, c. 702, §1 (NEW).]

SECTION HISTORY

1975, c. 382, §3 (NEW). 1979, c. 644, §§2,8 (AMD). 1989, c. 878, §E20 (AMD). 1993, c. 410, §S2 (AMD). 2005, c. 620, §21 (AMD). 2007, c. 702, §1 (AMD). 2011, c. 657, Pt. W, §5 (REV).

§622. SEPARABILITY**(REPEALED)**

SECTION HISTORY

1975, c. 382, §3 (NEW). 2005, c. 620, §22 (RP).

§623. PRIOR LIABILITY

The enactment of this subchapter does not have the effect of terminating or in any way modifying any liability, civil or criminal, in existence on October 1, 1975. [2005, c. 620, §23 (AMD).]

SECTION HISTORY

1975, c. 382, §3 (NEW). 1977, c. 78, §25 (AMD). 2005, c. 620, §23 (AMD).

§624. REPEALERS

Jurisdiction in all matters pertaining to the registration, distribution and disposal of pesticides and devices is by this subchapter vested exclusively in the board. [1989, c. 878, Pt. E, §21 (AMD).]

SECTION HISTORY

1975, c. 382, §3 (NEW). 1975, c. 623, §§5-A (AMD). 1989, c. 878, §E21 (AMD).

§625. RIGHT-OF-WAY SPRAYING; NO-SPRAY AGREEMENTS

Any public utility, or the Department of Transportation, that maintains a right-of-way through a municipality shall offer a no-spray agreement, with reasonable provisions, for the municipality to consider if it desires. Any agreement negotiated may include, but is not limited to, the responsibilities of the parties, the allocation of costs and the rights and remedies of the parties in the event of default and may apply to all or any part of the right-of-way within the municipality. Any agreement reached under this section must be negotiated in good faith, written and signed by all parties. As part of the no-spray agreement, the municipality may either perform the vegetation control work to standards as provided in the agreement or contract with the public utility or the Department of Transportation to conduct the work. [2005, c. 620, §24 (AMD).]

If a reasonable no-spray agreement is offered to a municipality and an agreement is not reached within 90 days after the date of the offer, the public utility or the Department of Transportation at its own option may apply pesticides in its right-of-way or use other methods to control the vegetation. If the municipality agrees to perform vegetation control work but does not perform it by the agreed-upon date, the public utility or the Department of Transportation, after 90 days' written notice to the municipality, at its own option may apply pesticides in its right-of-way or use other methods to control the vegetation. [2005, c. 620, §24 (AMD).]

It is the intent of the Legislature that this section make available to municipalities an alternative to right-of-way maintenance procedures that use pesticides. This section does not affect municipal authority to enact ordinances nor the authority of public utilities or the Department of Transportation to maintain its right-of-way clear of unwanted vegetation in the absence of an agreement. [2005, c. 620, §24 (AMD).]

SECTION HISTORY

1987, c. 702, §1 (NEW). 2005, c. 620, §24 (AMD).

Subchapter 3: EGGS

§631. DEFINITIONS

Terms used in sections 631 to 639 shall be construed as follows unless a different meaning is clearly apparent from the language or context:

1. Candling. "Candling" means the common practice of examining the interior of an egg by holding and twirling the same before a light passing through an aperture in an opaque shield.

1-A. Restricted egg. "Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker or loss.

[1973, c. 48, §1 (NEW) .]

2. Retail. "Retail" means selling direct to consumer.

3. Wholesale. "Wholesale" means selling to retailers.

SECTION HISTORY

1973, c. 48, §1 (AMD).

§631-A. OFFICIAL STANDARDS

The commissioner may by rule establish official definitions and standards and sizes for grading or classifying, packaging and labeling eggs. [2005, c. 512, §30 (AMD) .]

The standards and sizes pursuant to this section may not be lower in their requirements than the minimum requirements and the official standards and sizes for corresponding grades or classifications as adopted by the Secretary of Agriculture of the United States, commonly known as U.S. Grades. The commissioner may adopt by reference the United States standards, grades and weight classes for shell eggs as adopted by the United States Department of Agriculture Agricultural Marketing Service. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 512, §30 (AMD) .]

SECTION HISTORY

1973, c. 48, §2 (NEW). 1977, c. 694, §67 (AMD). 2005, c. 512, §30 (AMD) .

§632. LABELING

All eggs sold or offered for sale for human consumption by any person, partnership, association, firm or corporation shall be labeled with the grade and size designation as set forth in the Maine consumer grades, except as otherwise provided.

§633. STANDARDS OF QUALITY

Except as provided in section 636, the standards of quality for Maine consumer grades for shell eggs that are established by the commissioner apply to all shell eggs sold or offered for sale. The final determination of the grades is made by candling. [2005, c. 512, §31 (AMD) .]

SECTION HISTORY

1973, c. 48, §3 (RPR). 2005, c. 512, §31 (AMD) .

§634. GRADES; ADVERTISING

The net weight and size requirements for Maine consumer grades for shell eggs shall be established by the commissioner. In the establishment of such grades, the commissioner shall consult an advisory committee of 5 appointed by him, 3 of whom shall be chosen from a list submitted by the Maine Poultry Improvement Association. [1979, c. 541, Pt. A, §49 (AMD) .]

All advertising of such eggs shall include the correct size and grade designation in describing the eggs and the correct size and grade designation shall appear in clearly legible letters on the container in which such eggs are offered for sale. Each lot of eggs sold at wholesale shall be accompanied by an invoice stating both size and grade designation.

No signs, flyers, advertisements or false labels shall be used to sell or offer for sale or expose for sale any eggs which do not conform to the standards for quality and size for Maine consumer grades or established by the commissioner, or which do not conform to sections 631 to 639.

SECTION HISTORY

1973, c. 48, §4 (AMD). 1979, c. 541, §A49 (AMD).

§635. DESCRIPTIVE LABELS

The terms "fresh eggs," "strictly fresh eggs," "henery eggs," "new-laid eggs," "farm fresh eggs," "selected eggs," "quality certified eggs," "nearby eggs," "native eggs" or words or descriptions of similar import shall not be used on any eggs which do not meet the minimum requirements for Maine consumer Grade A.

§635-A. PROHIBITION ON SALE OF RESTRICTED EGGS

A person may not sell restricted eggs except that an egg producer or packer may sell restricted eggs on that producer's or packer's premises directly to a household consumer for use by that consumer and members of the consumer's household and the consumer's nonpaying guests and employees. [2005, c. 512, §32 (NEW) .]

SECTION HISTORY

2005, c. 512, §32 (NEW).

§636. EXEMPTIONS

1. Direct sales to consumers. Producers selling eggs of their own production direct to consumers are exempt from sections 631-A to 635 for those sales.

[2005, c. 512, §33 (NEW) .]

2. Eggs shipped for wholesale sale. An egg producer may ship eggs to a wholesaler or to another shipper without labeling and grading the eggs in accordance with sections 631-A to 635. When an egg producer ships eggs that are marked as to grade and size, the labeling must be accurate and comply with the standards of this subchapter and rules adopted pursuant to section 631-A.

[2005, c. 512, §33 (NEW) .]

SECTION HISTORY

1973, c. 48, §5 (RPR). 2005, c. 512, §33 (RPR).

§637. ENFORCEMENT

The commissioner shall administer sections 631 to 643 and may adopt, in a manner consistent with the Maine Administrative Procedure Act, uniform rules for such administration. The commissioner may recover the fines imposed for violations of sections 631 to 643 in a civil action brought in the commissioner's name, with the venue to be as in other civil actions, and if prevailing in that action, the commissioner shall recover full costs. [2005, c. 512, §34 (AMD) .]

SECTION HISTORY

1977, c. 694, §68 (AMD). 1977, c. 696, §66 (AMD). 2005, c. 512, §34 (AMD) .

§638. DISPOSAL OF FORFEITURES

All fines imposed for violation of this subchapter must be paid to the commissioner. The commissioner shall send all fines received for violations of this subchapter to the Treasurer of State for deposit in the General Fund. [2005, c. 512, §35 (AMD).]

SECTION HISTORY

1977, c. 696, §67 (RPR). 2005, c. 512, §35 (AMD).

§639. VIOLATIONS

Any person, firm, partnership, association or corporation who shall violate any of the provisions of sections 631 to 639 or shall neglect or refuse to comply with the provisions thereof or any rule or regulation promulgated hereunder commits a civil violation for which the following forfeitures shall be adjudged: [1977, c. 696, §68 (RPR).]

1. First violation. For the first violation, a forfeiture not to exceed \$50; and

[1977, c. 696, §68 (NEW) .]

2. Subsequent violation. For each subsequent violation, a forfeiture not to exceed \$200.

[1977, c. 696, §68 (NEW) .]

SECTION HISTORY

1977, c. 696, §68 (RPR).

§640. DEFINITIONS

As used in this Title, unless the context otherwise indicates, the following terms shall have the following meanings. [1979, c. 541, Pt. A, §50 (AMD).]

1. Processed eggs. "Processed eggs" shall be held to mean any shell eggs which in a way other than storage have been so treated as to keep them from natural deterioration.

2. Storage eggs. "Storage eggs" shall be held to mean any shell eggs that for a period of 30 days or over have been held in storage at a temperature of 45° Fahrenheit fresh prohibited.

3. Word fresh prohibited. No person, firm or corporation, selling or exposing for sale any shell eggs which have been in storage or in any way processed, shall use the word "fresh" in any combination of words to describe the character or value of such eggs.

SECTION HISTORY

1979, c. 541, §A50 (AMD).

§641. MARKING OF STORED OR PROCESSED EGGS

Any person, firm or corporation who exposes or offers for sale, either in any public place or elsewhere, any shell eggs which have been in storage or which in any way have been processed, shall conspicuously display upon the receptacle in which such shell eggs are offered for sale, or upon the package in which they are delivered to the purchaser, a notice containing the words "cold storage eggs" or "processed eggs" in accordance with the fact. In case any shell eggs which have been in storage or which have been processed are exposed for sale or offered for sale, in a manner which does not require a receptacle or package, the purchaser shall be informed definitely that such shell eggs are either cold storage or processed eggs, to the end that the purchaser may have knowledge of the facts with reference to the storage or processing of such eggs.

§642. CONTENTS OF INVOICE

Whenever any person, firm or corporation within this State ships or delivers to a purchaser within this State any shell eggs which have been in storage or processed, such person, firm or corporation shall deliver to the purchaser an invoice or bill showing thereon the character of such eggs. All containers of shell eggs deposited in cold storage shall be marked plainly with date of receipt and date of withdrawal by the officer, or his agents, in charge of the cold storage plant.

§643. VIOLATIONS

A person, firm or corporation that violates any provision of sections 640 to 642 commits a civil violation for which a forfeiture of not less than \$100 nor more than \$500 may be adjudged. [2001, c. 421, Pt. B, §6 (AMD); 2001, c. 421, Pt. C, §1 (AFF).]

SECTION HISTORY

1977, c. 696, §69 (RPR). 2001, c. 421, §B6 (AMD). 2001, c. 421, §C1 (AFF).

Subchapter 4: FEEDS

§691. TITLE

(REPEALED)

SECTION HISTORY

1971, c. 77, §2 (RP).

§692. DEFINITIONS

(REPEALED)

SECTION HISTORY

1971, c. 77, §2 (RP).

§693. REGISTRATION

(REPEALED)

SECTION HISTORY

1971, c. 77, §2 (RP).

§694. LABELING

(REPEALED)

SECTION HISTORY

1971, c. 77, §2 (RP).

§695. ADULTERATION

(REPEALED)

SECTION HISTORY

1971, c. 77, §2 (RP).

§696. MISBRANDING

(REPEALED)

SECTION HISTORY

1971, c. 77, §2 (RP).

§697. INSPECTION, SAMPLING AND ANALYSIS

(REPEALED)

SECTION HISTORY

1971, c. 77, §2 (RP).

§698. REGULATIONS, STANDARDS AND DEFINITIONS

(REPEALED)

SECTION HISTORY

1971, c. 77, §2 (RP).

§699. DETAINED COMMERCIAL FEEDS

(REPEALED)

SECTION HISTORY

1971, c. 77, §2 (RP).

§700. ENFORCEMENT

(REPEALED)

SECTION HISTORY

1971, c. 77, §2 (RP).

§701. PENALTIES

(REPEALED)

SECTION HISTORY

1971, c. 77, §2 (RP).

Subchapter 4-A: FEEDS**§711. TITLE**

This subchapter shall be known as the "Maine Commercial Feed Law of 1971." [1971, c. 77, §1 (NEW).]

SECTION HISTORY

1971, c. 77, §1 (NEW).

§712. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings. [1979, c. 541, Pt. A, §51 (AMD).]

1. Brand name. "Brand name" means a word, name, symbol or device, or any combination thereof, that identifies the commercial feed of a distributor or registrant and distinguishes it from that of others.

[2005, c. 512, §36 (AMD) .]

2. Commercial feed. "Commercial feed" means all materials except unmixed seed, whole or processed, when not adulterated within the meaning of section 717, subsections 1 to 4 which are distributed for use as feed or for mixing in feed, provided that the commissioner by regulation may exempt from this definition, or from specific provisions of this Act, commodities such as hay, straw, stover, silage, cobs, husks, hulls and individual chemical compounds or substances when such commodities, compounds or substances are not intermixed or mixed with other materials, and are not adulterated within the meaning of section 717, subsection 1, paragraph A.

[1971, c. 77, §1 (NEW) .]

3. Contract feeder. "Contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits or amount or quality of product.

[1971, c. 77, §1 (NEW) .]

4. Customer-formula feed. "Customer-formula feed" means commercial feed which consists of a mixture of commercial feeds or feed ingredients or both, each batch of which is manufactured according to the specific instructions of the final purchaser.

[1971, c. 77, §1 (NEW) .]

5. Distribute. "Distribute" means to offer for sale, sell, exchange or barter commercial feed; or to supply, furnish or otherwise provide commercial feed to a contract feeder.

[1971, c. 77, §1 (NEW) .]

6. Distributor. The term "distributor" means any person who distributes.

[1971, c. 77, §1 (NEW) .]

7. Drug. "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.

[1971, c. 77, §1 (NEW) .]

8. Feed ingredient. "Feed ingredient" means each of the constituent materials making up a commercial feed.

[1971, c. 77, §1 (NEW) .]

8-A. Home-based manufacturer of pet food. "Home-based manufacturer of pet food" means a person who manufactures 10 or fewer product names in that person's home and sells the products directly to consumers.

[2007, c. 459, §1 (NEW) .]

9. Label. "Label" means a display of written, printed or graphic matter upon or affixed to the container in which a commercial feed is distributed, or in the case of a bulk shipment the information shall accompany delivery.

[1971, c. 77, §1 (NEW) .]

10. Labeling. "Labeling" means all labels and other written, printed or graphic matter upon a commercial feed or any of its containers or wrapper, or accompanying such commercial feed.

[1971, c. 77, §1 (NEW) .]

11. Manufacture. "Manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.

[1971, c. 77, §1 (NEW) .]

12. Mineral feed. "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

[1971, c. 77, §1 (NEW) .]

13. Official sample. "Official sample" means a sample of feed taken by the commissioner or his agent in accordance with section 720, subsections 3, 5 or 6.

[1971, c. 77, §1 (NEW) .]

14. Percent. "Percent" or "percentages" means percentages by weights.

[1971, c. 77, §1 (NEW) .]

15. Person. "Person" includes individual, partnership, corporation and association.

[1971, c. 77, §1 (NEW) .]

16. Pet. "Pet" means any domesticated animal normally maintained in or near the household of the owner thereof.

[1971, c. 77, §1 (NEW) .]

17. Pet food. "Pet food" means any commercial feed prepared and distributed for consumption by pets.

[1971, c. 77, §1 (NEW) .]

18. Product name. "Product name" means the name of the commercial feed that identifies it as to kind, class or specific use and distinguishes it from all other products bearing the same brand name.

[2005, c. 512, §37 (AMD) .]

18-A. Specialty pet. "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles.

[1973, c. 43, (NEW) .]

18-B. Specialty pet food. "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

[1973, c. 43, (NEW) .]

19. Ton. "Ton" means a net weight of 2,000 pounds avoirdupois.

[1971, c. 77, §1 (NEW) .]

SECTION HISTORY

1971, c. 77, §1 (NEW). 1973, c. 43, (AMD). 1979, c. 541, §A51 (AMD). 2005, c. 512, §§36,37 (AMD). 2007, c. 459, §1 (AMD).

§713. ENFORCING OFFICIAL

This subchapter shall be administered by the Commissioner of Agriculture, Conservation and Forestry hereinafter in this subchapter called the "commissioner." [1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §6 (REV).]

SECTION HISTORY

1971, c. 77, §1 (NEW). 1979, c. 731, §19 (AMD). 2011, c. 657, Pt. W, §6 (REV).

§714. REGISTRATION

1. Application for registration. A person may not distribute in this State a commercial feed, except a customer-formula feed, that has not been registered pursuant to this section. The application for registration must be submitted in the manner prescribed by the commissioner on forms furnished by the commissioner. The annual fee is \$80 per product name for pet food and the total annual fee for a home-based manufacturer of pet food is \$80. The annual fee is \$80 per product name for all other commercial feed. Upon approval by the commissioner the registration must be issued to the applicant. All registrations expire on the 31st day of December. The commissioner may issue a registration for a one-year, 2-year or 3-year period. Registrations for a period in excess of one year may only be issued with the agreement of or at the request of the applicant. The fee for a 2-year registration is 2 times the annual fee. The fee for a 3-year registration is 3 times the annual fee.

[2007, c. 702, §2 (AMD) .]

2. Fees. The commissioner shall deposit 1/2 of the fees collected pursuant to subsection 1 in the General Fund and 1/2 of the fees collected in the Animal Welfare Fund established under section 3906-B.

[2001, c. 422, §2 (RPR) .]

3. Refusal. The commissioner is empowered to refuse registration of any commercial feed not in compliance with this subchapter and to cancel any registration subsequently found not to be in compliance with any provision of this subchapter. Registration, refusal and cancellation are rulemaking as that term is defined in the Maine Administrative Procedure Act and notice and opportunity for a hearing must be provided prior to refusal or cancellation in a manner consistent with the Maine Administrative Procedure Act. In any case, no registration may be refused or canceled, unless the registrant has been given an opportunity to amend the application in order to comply with the requirements of this subchapter.

[2007, c. 1, §3 (COR) .]

4. Surcharge on registration of pet food. For each product name of pet food registered in accordance with subsection 1, the applicant shall pay a \$20 surcharge in addition to the registration fee, except that a home-based manufacturer of pet food shall pay a total annual surcharge of \$20. The commissioner shall deposit the surcharge directly into the Companion Animal Sterilization Fund established under section 3910-B as it is received until the total of the surcharges received for that registration year equals \$100,000.

The commissioner shall deposit all surcharges received for a registration year in excess of \$100,000 into the Animal Welfare Fund established under section 3906-B, subsection 2.

[2009, c. 148, §1 (AMD) .]

SECTION HISTORY

1971, c. 77, §1 (NEW). 1977, c. 694, §69 (AMD). 1979, c. 672, §A19 (AMD). 1989, c. 888, §1 (AMD). 1993, c. 410, §S3 (AMD). 1997, c. 454, §1 (AMD). 2001, c. 422, §§1,2 (AMD). 2005, c. 281, §1 (AMD). 2005, c. 512, §§38,39 (AMD). RR 2007, c. 1, §3 (COR). 2007, c. 459, §2 (AMD). 2007, c. 702, §2 (AMD). 2009, c. 148, §1 (AMD).

§715. LABELING

A commercial feed shall be labeled as follows: [1971, c. 77, §1 (NEW).]

1. Commercial feed. In case of a commercial feed, except a customer-formula feed, it shall be accompanied by a label bearing the following information:

A. The net weight; [1971, c. 77, §1 (NEW).]

B. The product name and the brand name, if any, under which the commercial feed is distributed; [1971, c. 77, §1 (NEW).]

C. The guaranteed analysis stated in such terms as the commissioner by regulation determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by the Association of Official Analytical Chemists; [1971, c. 77, §1 (NEW).]

D. The common or usual name of each ingredient used in the manufacture of the commercial feed:

The commissioner by regulation may permit the use of a collective term for a group of ingredients which perform a similar function, or he may exempt such commercial feeds or any group thereof, from this requirement of an ingredient statement, if he finds that such statement is not required in the interest of consumers; [1971, c. 77, §1 (NEW).]

E. The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed; [1971, c. 77, §1 (NEW).]

F. Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the commissioner may require by regulation as necessary for their safe and effective use; [1971, c. 77, §1 (NEW).]

G. Such precautionary statements as the commissioner by regulation determines are necessary for the safe and effective use of the commercial feed. [1971, c. 77, §1 (NEW).]

[1971, c. 77, §1 (NEW) .]

2. Customer-formula feed. In the case of a customer-formula feed, it shall be accompanied by a label, invoice, delivery slip or other shipping document, bearing the following information:

A. Net weight; [1971, c. 77, §1 (NEW).]

B. Name and address of the manufacturer; [1971, c. 77, §1 (NEW).]

C. Name and address of the purchaser; [1971, c. 77, §1 (NEW).]

D. Date of delivery; [1971, c. 77, §1 (NEW).]

E. The product name and brand name, if any, and the net weight of each registered commercial feed used in the mixture, and the net weight of each other ingredient used; [1971, c. 77, §1 (NEW).]

F. Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the commissioner may require by regulation as necessary for their safe and effective use; [1971, c. 77, §1 (NEW).]

G. Such precautionary statements as the commissioner by regulation determines are necessary for the safe and effective use of the customer-formula feed. [1971, c. 77, §1 (NEW).]

[1971, c. 77, §1 (NEW) .]

SECTION HISTORY

1971, c. 77, §1 (NEW).

§716. MISBRANDING

1. Conditions deemed misbranding. A commercial feed shall be deemed to be misbranded:

A. If its labeling is false or misleading in any particular; [1971, c. 77, §1 (NEW).]

B. If it is distributed under the name of another commercial feed; [1971, c. 77, §1 (NEW).]

C. If it is not labeled as required in section 715; [1971, c. 77, §1 (NEW).]

D. If it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the commissioner; [1971, c. 77, §1 (NEW).]

E. If any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or devices in the labeling; and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. [1971, c. 77, §1 (NEW).]

[1971, c. 77, §1 (NEW) .]

SECTION HISTORY

1971, c. 77, §1 (NEW).

§717. ADULTERATION

1. Conditions deemed adulteration. A commercial feed shall be deemed to be adulterated:

A. If it bears or contains any poisonous or deleterious substance which may render it injurious to health, but in case the substance is not an added substance, such commercial feed shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health; or [1971, c. 77, §1 (NEW).]

B. If it bears or contains any added poisonous, added deleterious or added nonnutritive substance which is unsafe within the meaning of section 406 of the Federal Food, Drug and Cosmetic Act (other than one which is a pesticide chemical in or on a raw agricultural commodity, or a food additive); or [1971, c. 77, §1 (NEW).]

C. If it is, or it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug and Cosmetic Act; or [1971, c. 77, §1 (NEW).]

D. If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of the Federal Food, Drug and Cosmetic Act, section 408(a); provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under the Federal Food, Drug and Cosmetic Act, section 408, and

such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of the Federal Food, Drug and Cosmetic Act, section 408(a). [1979, c. 541, Pt. A, §52 (AMD).]

[1979, c. 541, Pt. A, §52 (AMD) .]

2. Valuable constituent omitted. If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor;

[1971, c. 77, §1 (NEW) .]

3. Composition or greatly differs from labeling. If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling;

[1971, c. 77, §1 (NEW) .]

4. Contains drug but does not conform to regulations. If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing or packaging do not conform to current good manufacturing practice regulations promulgated by the commissioner to assure that the drug meets the requirement of this Act as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In promulgating such regulations, the commissioner shall adopt the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under authority of the Federal Food, Drug and Cosmetic Act, unless he determines that they are not appropriate to the conditions which exist in this State;

[1971, c. 77, §1 (NEW) .]

5. Contains viable weed seed over limits. If it contains viable weed seeds in amounts exceeding the limits which the commissioner shall establish by rule or regulation.

[1971, c. 77, §1 (NEW) .]

SECTION HISTORY

1971, c. 77, §1 (NEW). 1979, c. 541, §A52 (AMD).

§718. PROHIBITED ACTS

1. Prohibitions. The following acts and the causing thereof within the State are prohibited:

A. The manufacture or distribution of any commercial feed that is adulterated or misbranded; [1971, c. 77, §1 (NEW).]

B. The adulteration or misbranding of any commercial feed; [1971, c. 77, §1 (NEW).]

C. The distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks and hulls, which are adulterated within the meaning of section 717, subsection 1; [1971, c. 77, §1 (NEW).]

D. The removal or disposal of a commercial feed in violation of an order under section 721; [1971, c. 77, §1 (NEW).]

E. The failure or refusal to register in accordance with section 714; and [2003, c. 452, Pt. B, §9 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

F. The violation of section 722, subsection 2. [2003, c. 452, Pt. B, §9 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. B, §9 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

1971, c. 77, §1 (NEW). 2003, c. 452, §B9 (AMD). 2003, c. 452, §X2 (AFF).

§719. RULES AND REGULATIONS

1. Promulgation. The commissioner is authorized to promulgate, in a manner consistent with the Maine Administrative Procedure Act, such rules and regulations for commercial feeds and pet foods as are specifically authorized in this subchapter and such other reasonable rules and regulations as may be necessary for the efficient enforcement of this subchapter. In the interest of uniformity the commissioner shall by regulation adopt, unless he determines that they are inconsistent with this subchapter or are not appropriate to conditions which exist in this State, the following:

A. The official definitions of feed ingredients and official feed terms adopted by the Association of American Feed Control Officials and published in the official publication of that organization, and [1971, c. 77, §1 (NEW).]

B. Any regulation promulgated pursuant to the authority of the Federal Food, Drug and Cosmetic Act U.S.C. Sec. 301, et seq., provided that the commissioner would have the authority under this subchapter to promulgate such regulations. [1971, c. 77, §1 (NEW).]

[1977, c. 694, §70 (AMD) .]

2. Publication. Before the issuance, amendment or repeal of any rule or regulation authorized by this subchapter, notice and opportunity for a hearing shall be provided in a manner consistent with the rule-making provisions of the Maine Administrative Procedure Act. Notwithstanding this paragraph, if the commissioner, pursuant to the authority of this subchapter, adopts the official definitions of feed ingredients or official feed terms as adopted by the Association of American Feed Control Officials, or regulations promulgated pursuant to the authority of the Federal Food, Drug and Cosmetic Act, any amendment or modification adopted by the association or by the Secretary of Health, Education and Welfare in the case of regulations promulgated pursuant to the Federal Food, Drug and Cosmetic Act, shall be adopted automatically under this subchapter without regard to the publication of the notice required by this subsection unless the commissioner by rule specifically determines that the amendment or modification shall not be adopted.

[1977, c. 694, §71 (RPR) .]

SECTION HISTORY

1971, c. 77, §1 (NEW). 1977, c. 694, §§70,71 (AMD).

§720. INSPECTION, SAMPLING AND ANALYSIS

1. Inspection. For the purpose of enforcement of this subchapter, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the commissioner, upon presenting appropriate credentials, are authorized to enter, during normal business hours, any factory, warehouse or establishment within the State in which commercial feeds are manufactured, processed, packed or held for distribution, or to enter any vehicle being used to transport or hold such feeds, and to inspect at reasonable times and

within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers and labeling therein. The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with the good manufacturing practice regulations established under section 717, subsection 4.

[1971, c. 77, §1 (NEW) .]

2. Completion. Each such inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

[1971, c. 77, §1 (NEW) .]

3. Receipt of sample. If the officer or employee making such inspection of a factory, warehouse or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises he shall give to the owner, operator or agent in charge a receipt describing the samples obtained.

[1971, c. 77, §1 (NEW) .]

4. Warrant. If the owner of any factory, warehouse or establishment described in subsection 1, or his agent, refuses to admit the commissioner or his agent to inspect in accordance with subsections 1 and 2, the commissioner is authorized to obtain from any state court a warrant directing such owner or his agent to submit the premises described in such warrant to inspection.

[1971, c. 77, §1 (NEW) .]

5. Entry. For the purpose of the enforcement of this subchapter, the commissioner or his duly designated agent is authorized to enter upon any public or private premises, including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds.

[1971, c. 77, §1 (NEW) .]

6. Methods. Sampling and analysis must be conducted in accordance with methods published by the Association of Official Analytical Chemists, or in accordance with other generally recognized methods.

[2005, c. 512, §40 (AMD) .]

7. Results. The results of all analyses of official samples shall be forwarded by the commissioner to the person named on the label and to the purchaser, if known, and the distributor of the feed. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, and upon request within 30 days following receipt of the analysis, the commissioner shall furnish to the registrant a portion of the sample concerned.

[1991, c. 1, §16 (COR) .]

8. Official sample. The commissioner, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in section 712, subsection 13 and obtained and analyzed as provided for in subsections 3, 5 and 6.

[1971, c. 77, §1 (NEW) .]

SECTION HISTORY

1971, c. 77, §1 (NEW). RR 1991, c. 1, §16 (COR). 2005, c. 512, §40 (AMD).

§721. DETAINED COMMERCIAL FEEDS

1. Withdrawal from distribution. When the commissioner or his authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this subchapter or of any of the prescribed regulations under this subchapter, he may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the commissioner or the court. The commissioner shall release the lot of commercial feed so withdrawn when said provisions and regulations have been complied with. The issuance of such an order shall not be considered licensing or an adjudicatory proceeding, as defined by the Maine Administrative Procedure Act. If compliance is not obtained within 30 days, the commissioner may begin, or upon request of the distributor or registrant shall begin, proceedings for condemnation.

[1977, c. 694, §72 (AMD) .]

2. Condemnation and confiscation. Any lot of commercial feed not in compliance with said provisions and regulations shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the area in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of this subchapter and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the State; provided that in no instance shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this subchapter.

[1971, c. 77, §1 (NEW) .]

SECTION HISTORY

1971, c. 77, §1 (NEW). 1977, c. 694, §72 (AMD).

§722. PENALTIES

1. Civil violation. A person may not violate this subchapter or impede, hinder or otherwise prevent the commissioner or the commissioner's duly authorized agent from performing the commissioner's duties in connection with this subchapter. The following penalties apply to violations of this subsection.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$100 and not more than \$200 may be adjudged. [2003, c. 452, Pt. B, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who violates this subsection after having previously violated this subsection commits a civil violation for which a fine of not less than \$200 and not more than \$500 may be adjudged. [2003, c. 452, Pt. B, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. B, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

2. Trade secret violation. A person may not use to that person's own advantage or reveal to other than the commissioner or officers of the department or to the courts when relevant in any judicial proceeding information acquired under the authority of this subchapter concerning a method, record, formulation or process that as a trade secret is entitled to protection. A person who violates this subsection commits a civil violation for which a fine of not less than \$100 and not more than \$500 may be adjudged. This prohibition

does not prohibit the commissioner or the commissioner's duly authorized agent from exchanging information of a regulatory nature with duly appointed officials of the United States Government or of other states who are similarly prohibited by law from revealing this information.

[2003, c. 452, Pt. B, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

3. Application. This subchapter may not be construed as requiring the commissioner or the commissioner's agent to cause suit to be brought or institute seizure proceedings or issue a withdrawal from distribution order as a result of minor violations of this subchapter or when the commissioner believes that the public interest will best be served by suitable notice of warning in writing.

[2003, c. 452, Pt. B, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

4. Process. The authorities to whom a violation is reported shall cause appropriate proceedings to be instituted in a court of competent jurisdiction without delay. Before the commissioner reports a violation for suit to be brought, the distributor must have an opportunity to present the distributor's view to the commissioner.

[2003, c. 452, Pt. B, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

5. Injunction. The commissioner is authorized to apply for and the court to grant a temporary or permanent injunction restraining a person from violating or continuing to violate this subchapter or any rule or regulation adopted under this subchapter notwithstanding the existence of other remedies at law. This injunction must be issued without bond.

[2003, c. 452, Pt. B, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

6. Review. A person adversely affected by an act, order or ruling made pursuant to this subchapter may bring action within 45 days after that act, order or ruling in the Superior Court in the county of the enforcement official's office for judicial review of the actions. The form of the proceeding must be any that may be provided by statute of the State to review decisions of administrative agencies or, in the absence or inadequacy of such a form, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunctions.

[2003, c. 452, Pt. B, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

1971, c. 77, §1 (NEW). 1977, c. 696, §§70,71 (AMD). 1979, c. 541, §A53 (AMD). 1979, c. 731, §19 (AMD). 2001, c. 421, §B7 (AMD). 2001, c. 421, §C1 (AFF). 2003, c. 452, §X2 (AFF). 2003, c. 452, §B10 (RPR).

§723. COOPERATION WITH OTHER ENTITIES

The commissioner may cooperate with and enter into agreements with governmental agencies of this State, other states, agencies of the Federal Government and private associations in order to carry out the purpose of this subchapter. [1971, c. 77, §1 (NEW).]

SECTION HISTORY

1971, c. 77, §1 (NEW).

§724. PUBLICATION

The commissioner shall publish the results of analysis of commercial feeds together with the names of persons from whom the samples were obtained, the names of the manufacturers thereof and such additional information as the commissioner determines is advisable. [2005, c. 512, §41 (AMD).]

SECTION HISTORY

1971, c. 77, §1 (NEW). 2005, c. 512, §41 (AMD).

Subchapter 5: FERTILIZERS

§741. TITLE

This subchapter shall be known as the "Maine Commercial Fertilizer Law".

§742. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings. [1979, c. 541, Pt. A, §54 (AMD).]

1. Agricultural lime.

[2007, c. 147, §1 (RP) .]

1-A. Biosolids. "Biosolids" means municipal sewage sludge that is a primarily organic, semisolid product resulting from the wastewater treatment process that can be beneficially recycled, including material derived from biosolids and septic tank sludge, also known as septage.

[2013, c. 204, §1 (NEW) .]

2. Brand. "Brand" means a term, design or trademark used in connection with one or several grades of commercial fertilizer.

3. Bulk fertilizers. "Bulk fertilizers" means commercial fertilizer distributed in a non-packaged form.

4. Commercial fertilizer. "Commercial fertilizer" means a substance containing one or more recognized fertilizer materials bearing a guaranteed analysis on the product label of a packaged product or the accompanying delivery paperwork or invoice of a bulk fertilizer. It does not include unmanipulated animal and vegetable manures.

[2013, c. 204, §2 (RPR) .]

5. Commissioner. "Commissioner" means the Commissioner of Agriculture, Conservation and Forestry or his authorized agent.

[1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §6 (REV) .]

6. Distribute; distributor. "Distribute" means to offer for sale, sell, barter or otherwise supply commercial fertilizers. The term "distributor" means any person who distributes.

7. Fertilizer material. "Fertilizer material" means any substance containing nitrogen, phosphorus, potassium or any recognized plant nutrient element or compound which is used primarily for its plant nutrient content or for compounding mixed fertilizers except unmanipulated animal and vegetable manures.

8. Grade. "Grade" means any commercial fertilizer having a specific minimum percentage of plant nutrients that is the same as the guaranteed analysis, expressed in whole numbers.

[2009, c. 393, §2 (AMD) .]

9. Guaranteed analysis. "Guaranteed analysis":

A. "Guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:

Total Nitrogen (N) per cent

Available Phosphoric Acid (P₂O₅)..... per cent

Soluble Potash (K₂O) per cent; and

[2007, c. 147, §2 (AMD) .]

B. "Guaranteed analysis" in paragraph A includes:

(1) For unacidulated mineral phosphatic materials and basic slag, both total and available phosphorus or phosphoric acid and the degree of fineness. For bone, tankage and other organic phosphatic materials, total phosphorus or phosphoric acid; and

(2) Additional plant nutrients expressed as the elements, when permitted by the commissioner.

[2007, c. 147, §2 (AMD) .]

[2007, c. 147, §2 (AMD) .]

10. Mixed fertilizers. "Mixed fertilizers" means any combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth.

11. Official sample. "Official sample" means any sample of commercial fertilizer taken by the commissioner.

11-A. Packaged biosolids. "Packaged biosolids" means biosolids distributed in a sealed container provided by the distributor of the material.

[2013, c. 204, §3 (NEW) .]

12. Per cent or percentage. "Per cent" or "percentage" means the percentage by weight.

13. Person. "Person" includes individual, partnership, association, firm and corporation.

14. Registrant. "Registrant" means the person who registers commercial fertilizer under this subchapter.

15. Singular and plural. Words importing the singular number may extend and be applied to several persons or things and words importing the plural number may include the singular.

16. Ton. "Ton" means a net weight of 2,000 pounds avoirdupois.

17. Unpackaged biosolids. "Unpackaged biosolids" means biosolids distributed in a loose, unpackaged form in an unsealed container, including, but not limited to, a tote bag, tote tank, bin, tank, trailer, spreader truck, railcar and pickup truck bed or other container provided by the final user solely for transport of the material.

[2013, c. 204, §4 (NEW) .]

SECTION HISTORY

1979, c. 541, §A54 (AMD). 1979, c. 731, §19 (AMD). 2007, c. 147, §§1, 2 (AMD). 2009, c. 393, §2 (AMD). 2011, c. 657, Pt. W, §6 (REV). 2013, c. 204, §§1-4 (AMD).

§743. REGISTRATION

Each brand and grade of commercial fertilizer must be registered before being offered for sale, sold or distributed in this State. The application for registration must be submitted to the commissioner on forms furnished by the commissioner and must be accompanied by an annual fee of \$100 per product. All registrations expire on December 31st or in a manner consistent with the provisions as to license expiration of the Maine Administrative Procedure Act, Title 5, section 10002, whichever is later. The commissioner may issue a registration for a one-year, 2-year or 3-year period. Registrations for a period in excess of one year may only be issued with the agreement of or at the request of the applicant. The fee for a 2-year registration is 2 times the annual fee. The fee for a 3-year registration is 3 times the annual fee. The commissioner may refuse to register or renew or may suspend or cancel registration for failure to comply with this subchapter or with rules adopted pursuant to this subchapter. This refusal, suspension or cancellation is considered rulemaking as that term is defined in the Maine Administrative Procedure Act, Title 5, chapter 375 and notice and opportunity for a hearing must be provided in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375. The application must include the following information: [2005, c. 12, Pt. EEE, §1 (AMD).]

1. Weight. The net weight;

2. Brand and grade. The brand and grade;

3. Analysis. The guaranteed analysis;

4. Registrant's name and address. The name and address of the registrant; and

[2001, c. 670, §2 (AMD) .]

5. Additional information. Additional information as required in rules adopted by the department.

[2001, c. 670, §3 (NEW) .]

The fees so collected by the commissioner shall be deposited in the General Fund. [1979, c. 672, Pt. A, §23 (RPR).]

A distributor shall not be required to register any brand and grade of commercial fertilizer which is already registered under this subchapter by another person.

The plant nutrient content of each and every brand and grade of commercial fertilizer must remain uniform for the period of registration.

SECTION HISTORY

1977, c. 694, §§73,74 (AMD). 1979, c. 672, §§A22,23 (AMD). 1989, c. 888, §2 (AMD). 1997, c. 454, §2 (AMD). 2001, c. 670, §§1-3 (AMD). 2005, c. 12, §EEE1 (AMD).

§743-A. TONNAGE REPORT

1. Registrants required to report. On or before September 1st of each year, a registrant shall file with the commissioner, on a form prescribed by the commissioner, the number of tons of each brand and grade of commercial fertilizer sold by the registrant in the State during the 12 months preceding July 1st of that year. A fee of \$1 per ton sold during the 12 months preceding July 1st of that year must accompany the form.

[2011, c. 607, §1 (AMD) .]

2. Fees; nonlapsing fund. The commissioner shall deposit all fees collected under this section in a dedicated, nonlapsing account established under section 765, subsection 2 for the purpose of administering and enforcing this subchapter and subchapter 5-A.

[2009, c. 393, §3 (NEW) .]

3. Commissioner's report. The commissioner may publish and distribute annually, to each registrant and other interested persons, a report showing the total tons of commercial fertilizer and the total tons by grade sold in the State.

[2009, c. 393, §3 (NEW) .]

SECTION HISTORY

2009, c. 393, §3 (NEW). 2011, c. 607, §1 (AMD).

§743-B. EXEMPTION FOR BIOSOLIDS

Sections 743 and 743-A do not apply to packaged biosolids or unpackaged biosolids that are derived primarily from residuals regulated by Title 38, chapter 13 and by rules adopted by the Department of Environmental Protection governing solid waste management matters concerning composting facilities and the agronomic utilization of residuals when those biosolids include a legible and conspicuous disclaimer on their marketing materials and labeling specifically stating: "This product is not a commercial fertilizer, and any nutrient claims are not a guaranteed analysis." If a fertilizer material percentage statement appears on a label or accompanying delivery documentation, except for those products for which delivery documentation is required by Department of Environmental Protection rule, that product must be registered as a fertilizer.

[2013, c. 204, §5 (NEW).]

SECTION HISTORY

2013, c. 204, §5 (NEW).

§744. LABELING

Any commercial fertilizer distributed in this State in containers must have placed on or affixed to the container a label setting forth in clearly legible form the information required by section 743, subsections 1 to 5. [2007, c. 147, §3 (AMD).]

If distributed in bulk, a written or printed statement of the information required by section 743, subsections 1 to 5, must accompany delivery and be supplied to the purchaser at time of delivery. [2007, c. 147, §3 (AMD) .]

SECTION HISTORY

2007, c. 147, §3 (AMD).

§745. INSPECTION, SAMPLING AND ANALYSIS

The commissioner shall inspect and sample for analysis in accordance with section 490 commercial fertilizers distributed within this State to the extent the commissioner considers necessary to determine compliance with this subchapter. The commissioner is authorized to enter upon any public or private premises during regular business hours in order to have access to commercial fertilizers, subject to this subchapter and the rules adopted pursuant to section 748. [2007, c. 147, §4 (AMD).]

The methods of sampling, sample preparation and analysis are those adopted from sources such as AOAC International. The commissioner, in determining for administrative purposes whether a commercial fertilizer is deficient in any component, is guided solely by the official sample as defined and obtained and analyzed as provided for in this section. [2007, c. 147, §4 (AMD).]

When the inspection and analysis of an official sample indicate a commercial fertilizer has been adulterated or misbranded, the commissioner shall forward the results of the analysis to the distributor or manufacturer. Upon request within 30 days, the commissioner shall furnish to the registrant a portion of the sample concerned. [2005, c. 512, §42 (AMD).]

SECTION HISTORY

2005, c. 512, §42 (AMD). 2007, c. 147, §4 (AMD).

§746. MISBRANDING

No person shall distribute misbranded fertilizer. A commercial fertilizer shall be deemed to be misbranded:

1. False or misleading statements. If false or misleading statements concerning its agricultural value are made on the container or in any advertising matter accompanying or associated with the commercial fertilizer;

2. Distributed under another name. If it is distributed under the name of another fertilizer;

3. Container not labeled as required. If its container is not labeled as required in section 744 and in regulations prescribed under this subchapter;

4. Information required placed conspicuously. If any word, statement or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

5. Not registered and fee not paid. If it is a grade of commercial fertilizer which is not registered with the commissioner and the prescribed fee paid in accordance with this subchapter.

§747. ADULTERATION

No person shall distribute an adulterated commercial fertilizer. A commercial fertilizer shall be deemed to be adulterated:

1. Quality, etc. not in conformity. If its weight, composition, quality, strength or purity do not conform in each particular to the claims made upon the affixed guaranty;

2. Deleterious materials. If it contains any material in sufficient amount to be deleterious to growing plants or any deleterious or harmful substances in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil or water; or

[2001, c. 670, §4 (AMD).]

3. Other materials. If it is found to contain any pulverized leather, hair, ground hoofs, horns, wool waste, peat, garbage tankage or any nitrogenous ingredients derived from any inert material, unless the same has been so treated as to be available as plant food as determined by the methods adopted by AOAC International, without an explicit printed statement of fact, conspicuously affixed to the package of the fertilizer and accompanying and going with every lot or package of the same, in which fertilizer materials named in this subsection aid in making up the required or guaranteed analysis.

[2007, c. 147, §5 (AMD) .]

SECTION HISTORY

2001, c. 670, §4 (AMD). 2007, c. 147, §5 (AMD).

§748. REGULATIONS, STANDARDS AND DEFINITIONS

The commissioner is charged with the enforcement of this subchapter, and is empowered to promulgate and adopt, in a manner consistent with the Maine Administrative Procedure Act, such reasonable rules and regulations as may be necessary to carry into effect the full intent and meaning of this subchapter. The commissioner is empowered to adopt regulations establishing definitions and standards for commercial fertilizer ingredients and such other regulations as may be necessary for the enforcement of any provisions of this subchapter. [1977, c. 694, §75 (AMD) .]

1. "Withdrawal from sale" orders. When the commissioner has reasonable cause to believe a commercial fertilizer is being distributed in violation of any of the provisions of this subchapter, or of any of the prescribed regulations under this subchapter, he may issue and enforce a written or printed "withdrawal from sale" order warning the distributor not to dispose of the fertilizer in any manner until written permission is given by the commissioner or the court. The commissioner shall release the commercial fertilizer so withdrawn when the provisions and regulations have been complied with and all costs and expenses incurred in the withdrawal have been paid. The issuance of such an order shall not be considered licensing or an adjudicatory proceeding, as defined by the Maine Administrative Procedure Act. If compliance is not obtained within 30 days, the commissioner may begin proceedings for condemnation.

[1977, c. 694, §76 (AMD) .]

2. Condemnation and confiscation. Any lot of commercial fertilizer, not in compliance with this subchapter, shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the area in which said commercial fertilizer is located. In the event the court finds the said commercial fertilizer to be in violation of this subchapter, and orders the condemnation of said commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the State. In no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial fertilizer or for permission to process or relabel said commercial fertilizer to bring it into compliance with this subchapter.

3. Establishment of allowances. The commissioner shall establish by rule allowances for deviations from the guaranteed analysis for plant nutrients and from the overall index value of a fertilizer. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 147, §6 (NEW) .]

SECTION HISTORY

1977, c. 694, §§75,76 (AMD). 2007, c. 147, §6 (AMD).

§749. ENFORCEMENT

This subchapter shall be administered by the commissioner. [1979, c. 541, Pt. A, §55 (AMD).]

SECTION HISTORY

1979, c. 541, §A55 (AMD).

§750. VIOLATIONS

1. Violation. A person, firm or corporation may not violate this subchapter or a rule adopted pursuant to this subchapter.

[2003, c. 452, Pt. B, §11 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

2. Penalty. The following penalties apply to violations of this section.

A. A person who violates subsection 1 commits a civil violation for which a fine of not more than \$500 may be adjudged. [2007, c. 147, §7 (AMD).]

B. A person who violates subsection 1 after having previously violated subsection 1 commits a civil violation for which a fine of not more than \$1,000 may be adjudged. [2007, c. 147, §7 (AMD).]

[2007, c. 147, §7 (AMD) .]

3. Application. This subchapter may not be construed as requiring the commissioner or the commissioner's agent to report for suit or for the institution of seizure proceedings as a result of minor violations of this subchapter when the commissioner believes that the public interest will be best served by a suitable notice of warning in writing.

[2003, c. 452, Pt. B, §11 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

1977, c. 696, §72 (RPR). 2003, c. 452, §X2 (AFF). 2003, c. 452, §B11 (RPR). 2007, c. 147, §7 (AMD).

§751. ASSESSMENTS FOR DEFICIENCIES

In addition to any fine adjudged under section 750, an assessment for deficiencies in a fertilizer must be made in accordance with this section. For the purposes of this section, a deficiency occurs when an investigational analysis determines that the allowances established in rules adopted under section 748, subsection 3 have been exceeded. [2007, c. 147, §8 (NEW).]

1. Primary plant nutrients; overall index. An assessment of 2 times the commercial value of the deficiency or deficiencies as determined under subsection 3 must be made if:

A. The analysis determines that a fertilizer is deficient in one or more of its guaranteed primary plant nutrients; or [2007, c. 147, §8 (NEW).]

B. The analysis determines that the overall index value is deficient. [2007, c. 147, §8 (NEW).]

When a fertilizer is subject to an assessment under both paragraphs A and B, the larger assessment applies.

[2007, c. 147, §8 (NEW) .]

2. Other deficiencies. When a fertilizer is labeled to guarantee or a bulk fertilizer is accompanied by a statement guaranteeing that the fertilizer contains recognized plant nutrients other than nitrogen, available phosphate or soluble potash, the commissioner may evaluate the fertilizer and prescribe an assessment for deficiencies in any of the claimed nutrients based on commercial values determined under subsection 3.

[2007, c. 147, §8 (NEW) .]

3. Determination of commercial value. For the purpose of determining the commercial value of fertilizer, the commissioner shall use the amount originally invoiced to the consumer per unit of nitrogen, available phosphate, soluble potash or other nutrients that the registrant is required to or may guarantee. The values derived from the invoice must be used in determining the assessment.

[2007, c. 147, §8 (NEW) .]

4. Payment to consumer; commissioner. Assessments made under subsections 1 and 2 must be paid by the registrant to the consumer of the lot of fertilizer represented by the sample analyzed. The commissioner shall send notification of the amount of the assessment with the results of the analysis sent in accordance with section 745. Assessments must be made within 30 days of the date of the notification. If the consumer cannot be located, the registrant shall submit the assessment to the commissioner for deposit in the commercial fertilizer account under subsection 5.

[2007, c. 147, §8 (NEW) .]

5. Commercial fertilizer account. The commissioner shall deposit all assessments submitted to the commissioner in accordance with subsection 4 in a dedicated account established within the department. The account is a nonlapsing interest-bearing account. Funds from the account may only be used to pay costs of sampling and analyzing fertilizer.

[2007, c. 147, §8 (NEW) .]

SECTION HISTORY

2007, c. 147, §8 (NEW).

Subchapter 5-A: AGRICULTURAL LIMING MATERIALS

§761. TITLE

This subchapter shall be known and may be cited as the "Maine Agricultural Liming Materials Act."

[1987, c. 425, §§ 1, 3 (NEW).]

SECTION HISTORY

1987, c. 425, §§1,3 (NEW).

§762. DEFINITIONS

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [1987, c. 425, §§ 1, 3 (NEW).]

1. Agricultural liming materials. "Agricultural liming material" means a product whose calcium and magnesium compounds are capable of neutralizing soil acidity.

[1987, c. 425, §§ 1, 3 (NEW) .]

2. Brand. "Brand" means the term, designation, trademark, product name or other specific designation under which an individual agricultural liming material is offered for sale.

[1987, c. 425, §§ 1, 3 (NEW) .]

3. Bulk. "Bulk" means a nonpackaged form.

[1987, c. 425, §§ 1, 3 (NEW) .]

4. Burnt lime. "Burnt lime" means a material made from limestone which consists essentially of calcium oxide or a combination of calcium oxide with magnesium oxide.

[1987, c. 425, §§ 1, 3 (NEW) .]

5. Calcium carbonate equivalent. "Calcium carbonate equivalent" means the acid neutralizing capacity of an agricultural liming material expressed as a weight percentage of calcium carbonate.

[1987, c. 425, §§ 1, 3 (NEW) .]

6. Commissioner. "Commissioner" means the Commissioner of Agriculture, Conservation and Forestry.

[2009, c. 2, §6 (COR); 2011, c. 657, Pt. W, §6 (REV) .]

7. Distribute; distributor. "Distribute" means to offer for sale, sell, barter or otherwise supply agricultural liming materials. The term "distributor" means any person who is engaged in the business of distributing agricultural liming materials.

[1987, c. 425, §§ 1, 3 (NEW) .]

8. Fineness. "Fineness" means the percentage by weight of the material which will pass federal standard sieves of specified sizes. In promulgating rules relating to fineness, the commissioner shall be guided by recommendations established by the American Society for Testing Materials.

[1987, c. 425, §§ 1, 3 (NEW) .]

9. High magnesium. "High magnesium" means lime designated as high-mag or dolomitic which must contain at least 5% magnesium.

[1987, c. 425, §§ 1, 3 (NEW) .]

10. Hydrated lime. "Hydrated lime" means a material, made from burnt lime, which consists essentially of calcium hydroxide or a combination of calcium hydroxide with magnesium oxide and magnesium hydroxide.

[1987, c. 425, §§ 1, 3 (NEW) .]

11. Industrial by-product. "Industrial by-product" means any industrial waste or by-product containing calcium or calcium and magnesium in forms that will neutralize soil acidity.

[1987, c. 425, §§ 1, 3 (NEW) .]

12. Label. "Label" means any written or printed matter on or attached to the package or on the delivery ticket which accompanies bulk shipments.

[1987, c. 425, §§ 1, 3 (NEW) .]

13. Limestone. "Limestone" means a material capable of neutralizing soil acidity, consisting essentially of calcium carbonate or a combination of calcium carbonate with magnesium carbonate.

[1987, c. 425, §§ 1, 3 (NEW) .]

14. Marl. "Marl" means a granular or loosely consolidated loam composed largely of clays, sea shell fragments and carbonates of calcium and magnesium.

[1987, c. 425, §§ 1, 3 (NEW) .]

15. Percent or percentage. "Percent" or "percentage" means by weight.

[1987, c. 425, §§ 1, 3 (NEW) .]

16. Person. "Person" means individual, partnership, association, firm or corporation.

[1987, c. 425, §§ 1, 3 (NEW) .]

17. Ton. "Ton" means a net weight of 2,000 pounds avoirdupois or metric weight, if and when appropriate and in accordance with rules.

[1987, c. 425, §§ 1, 3 (NEW) .]

18. Weight. "Weight" means the weight of undried material as offered for sale.

[1987, c. 425, §§ 1, 3 (NEW) .]

SECTION HISTORY

1987, c. 425, §§1,3 (NEW). RR 2009, c. 2, §6 (COR). 2011, c. 657, Pt. W, §6 (REV).

§763. LABELING

1. Contents of label. Agricultural liming materials distributed in the State shall have affixed to each package in a conspicuous manner on the outside of the package, a plainly printed, stamped or otherwise marked label, tag or statement or, in the case of bulk sales, a delivery slip setting forth at least the following information:

A. The name and principal office address of the manufacturer or distributor; [1987, c. 425, §§1, 3 (NEW) .]

B. The brand or trade name of the material; [1987, c. 425, §§1, 3 (NEW) .]

C. The identification of the type of agricultural liming material according to section 762; [1987, c. 425, §§1, 3 (NEW) .]

D. The net weight of the agricultural liming material; [1987, c. 425, §§1, 3 (NEW) .]

E. A statement expressing minimum total neutralizing value stated as calcium carbonate equivalence and the minimum calcium carbonate equivalence derived from magnesium sources; and [1987, c. 425, §§1, 3 (NEW) .]

F. The minimum percent of the agricultural liming material by weight passing through federal standard sieves as prescribed by rules adopted by the commissioner. [1987, c. 425, §§1, 3 (NEW) .]

[1987, c. 425, §§1, 3 (NEW) .]

2. False or misleading information prohibited. No information or statement may appear on any package, label, delivery slip or advertising matter which is false or misleading relative to the quality, analysis, type or composition of the agricultural liming material.

[1987, c. 425, §§1, 3 (NEW) .]

3. Adulterated material. In the case of any material which has been adulterated subsequent to packaging, labeling or loading and before delivery to the consumer, a plainly marked notice to that effect shall be affixed by the vendor to the package or delivery slip to identify the kind and degree of the adulteration.

[1987, c. 425, §§1, 3 (NEW) .]

4. Posting of statement. At every site from which agricultural liming materials are delivered in bulk and at every place where consumer orders for bulk deliveries are placed, there shall be conspicuously posted a copy of the label required by this section for each brand and type of agricultural liming material sold in bulk.

[1987, c. 425, §§1, 3 (NEW) .]

5. Rule concerning calcium and magnesium content. When the commissioner finds, after a public hearing held in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, that the requirement for expressing the calcium and magnesium in elemental form will not impose an economic hardship on distributors and users of agricultural liming materials by reason of conflicting labeling requirements among the states, he may require that the minimum percentage of calcium carbonate and magnesium carbonate be expressed in the following form:

Total calcium (Ca) percent

Total magnesium (Mg)..... percent

The effective date of the rule shall be not less than 6 months following the issuance of the rule and, for a period of 2 years following the effective date of the rule, the equivalent of calcium and magnesium may also be shown in the form of calcium carbonate and magnesium carbonate.

[1987, c. 425, §§1, 3 (NEW) .]

SECTION HISTORY

1987, c. 425, §§1, 3 (NEW) .

§764. PROHIBITED ACTS

No person may sell or offer for sale any agricultural liming material in this State unless it complies with this subchapter and rules adopted under this subchapter. No person may sell or offer for sale any agricultural liming material in this State containing materials that are or will be deleterious to plant or animal life, when the agricultural liming material is applied at rates recommended by a soils testing laboratory. [1987, c. 425, §§ 1, 3 (NEW) .]

SECTION HISTORY

1987, c. 425, §§1,3 (NEW) .

§764-A. EXEMPTION FOR INDUSTRIAL BY-PRODUCTS

Section 764 does not apply to unpackaged industrial by-products derived primarily from residuals regulated by Title 38, chapter 13 and by rules adopted by the Department of Environmental Protection governing solid waste management matters concerning composting facilities and the agronomic utilization of

residuals when those industrial by-products include a legible and conspicuous disclaimer on their marketing materials and labeling specifically stating: "This product is an industrial by-product, and any claims of neutralizing value and fineness are not guarantees." [2013, c. 204, §6 (NEW).]

Industrial by-products exempted under this section need not comply with sections 765 and 766. [2013, c. 204, §6 (NEW).]

SECTION HISTORY

2013, c. 204, §6 (NEW).

§765. REGISTRATION

1. Registration required; fee. Each separately identified agricultural liming product shall be registered before being offered for sale, sold or distributed in the State. The application for registration shall be submitted to the commissioner on forms furnished or approved by the commissioner and shall be accompanied by a fee of \$50. Upon approval by the commissioner, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31st of each year.

[1987, c. 425, §§1, 3 (NEW) .]

2. Fees; nonlapsing fund. The commissioner shall collect all fees under this subchapter and section 743-A and deposit them with the Treasurer of State in a separate account to be used for carrying out this subchapter and subchapter 5, including the cost of inspection, sampling and analysis of commercial fertilizers and agricultural liming materials. These funds do not lapse, but remain in a carry-over account.

[2009, c. 393, §4 (AMD) .]

3. Registration not required if already registered. A distributor shall not be required to register any brand of agricultural liming material which is already registered under this subchapter by another person, provided that the label does not differ in any respect.

[1987, c. 425, §§1, 3 (NEW) .]

SECTION HISTORY

1987, c. 425, §§1,3 (NEW). 2009, c. 393, §4 (AMD).

§766. REPORT OF TONNAGE

1. By registrants. On or before September 1st in each year each registrant shall file with the commissioner, on forms prescribed by the commissioner, the number of tons of each agricultural liming material sold during the 12 months preceding July 1st of that year. A fee of \$1 per ton sold during the 12 months preceding July 1st of that year must accompany the form.

[2011, c. 607, §2 (AMD) .]

2. Commissioner's report. The commissioner may publish and distribute annually, to each agricultural liming material registrant and other interested persons, a composite report showing the tons of agricultural liming material sold in the State.

[1987, c. 425, §§ 1, 3 (NEW) .]

SECTION HISTORY

1987, c. 425, §§1,3 (NEW). 2009, c. 393, §5 (AMD). 2011, c. 607, §2 (AMD).

§767. INSPECTION; SAMPLING; ANALYSIS

1. Commissioner shall inspect, analyze, test. The commissioner, or his authorized agent, shall sample, inspect, analyze and test the agricultural liming materials distributed within this State to determine whether the agricultural liming materials are in compliance with this subchapter. The commissioner, individually or through his agent, may enter upon any public or private premises or carriers during regular business hours in order to have access to agricultural liming materials subject to this subchapter and rules adopted under this subchapter and to the records relating to their distribution.

[1987, c. 425, §§ 1, 3 (NEW) .]

2. Methods of analysis and sampling. The methods of analysis and sampling shall be those approved by the commissioner and shall be guided by the Association of Official Analytical Chemists procedures.

[1987, c. 425, §§ 1, 3 (NEW) .]

3. Adulterated or misbranded materials. When the inspection and analysis of an official sample indicate an agricultural liming material has been adulterated or misbranded, the results of analysis shall be forwarded by the commissioner to the registrant and to the distributor of the sample. If the registrant or distributor, within 30 days of notification, requests a portion of the test sample then the commissioner shall furnish, within 30 days of this request, a portion of the sample to the registrant or distributor who made the request.

[1987, c. 425, §§ 1, 3 (NEW) .]

SECTION HISTORY

1987, c. 425, §§1,3 (NEW).

§768. STOP SALE ORDERS

1. Issuance of order. The commissioner may issue a written "stop sale, use or removal" order to the owner or custodian of any lot of agricultural liming materials when the commissioner determines that a violation of this subchapter has taken place. The order must include a notice that the owner or custodian may request a review of the determination of the commissioner at a hearing by filing a written request with the commissioner.

[1987, c. 425, §§ 1, 3 (NEW) .]

2. Hearing. Within 10 days of receipt of a request for a hearing under subsection 1, the commissioner shall hold a hearing in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. Upon the hearing, the commissioner shall either rescind the order or, for good cause shown, continue the order.

[1987, c. 425, §§ 1, 3 (NEW) .]

3. Release of materials. When the requirements of this subchapter have been met and all costs and expenses incurred in connection with the withdrawal have been paid, the commissioner shall release the agricultural liming materials held under this section by terminating the "stop sale, use or removal" order and issuing a release order. The issuance of the release order shall not be considered licensing or an adjudicatory proceeding, as defined by the Maine Administrative Procedure Act, Title 5, chapter 375.

[1987, c. 425, §§ 1, 3 (NEW) .]

SECTION HISTORY

1987, c. 425, §§1,3 (NEW).

§769. FINES FOR VIOLATIONS

1. Violation. A person, firm or corporation may not violate this subchapter or a rule adopted pursuant to this subchapter.

[2003, c. 452, Pt. B, §12 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

2. Penalty. The following penalties apply to violations of this section.

A. A person who violates subsection 1 commits a civil violation for which a fine of not more than \$100 may be adjudged. [2003, c. 452, Pt. B, §12 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

B. A person who violates subsection 1 after having previously violated subsection 1 commits a civil violation for which a fine of not more than \$200 may be adjudged. [2003, c. 452, Pt. B, §12 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

[2003, c. 452, Pt. B, §12 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

3. Application. This subchapter may not be construed as requiring the commissioner or the commissioner's agent to bring suit or institute seizure proceedings as a result of minor violations of this subchapter when the commissioner believes that the public interest will be best served by a suitable notice of warning in writing.

[2003, c. 452, Pt. B, §12 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

1987, c. 425, §§1,3 (NEW). 2003, c. 452, §X2 (AFF). 2003, c. 452, §B12 (RPR) .

§770. RULES FOR ADMINISTRATION

The commissioner after reasonable notice and hearing may promulgate and enforce rules for the administration of this subchapter, in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, and grant exemptions from specific requirements of this subchapter as, from time to time, may be required. [1987, c. 425, §§ 1, 3 (NEW) .]

SECTION HISTORY

1987, c. 425, §§1,3 (NEW) .

Subchapter 5-B: MAINE PLANT AND SOIL AMENDMENT ACT

§775. TITLE

This Act shall be known as the "Maine Plant and Soil Amendment Act." [1979, c. 491, §1 (NEW) .]

SECTION HISTORY

1979, c. 491, §§1,2 (NEW) .

§776. DEFINITIONS

As used in this subchapter, unless the context indicates otherwise, the following terms shall have the following meanings. [1979, c. 491, §1 (NEW) .]

1. Brand name. "Brand name" means the term, designation, trademark, product name or other specific designation under which individual plant or soil amendments are distributed.

[1979, c. 491, §1 (NEW) .]

2. Bulk. "Bulk" means in nonpackaged form.

[1979, c. 491, §1 (NEW) .]

3. Commissioner. "Commissioner" means the Commissioner of Agriculture, Conservation and Forestry.

[1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §6 (REV) .]

4. Distribute. "Distribute" means to import, consign, manufacture, produce, compound, mix or blend plant or soil amendments, or offer for sale, sell, barter or otherwise supply plant or soil amendments in this State.

[1979, c. 491, §1 (NEW) .]

5. Distributor. "Distributor" means any person who distributes.

[1979, c. 491, §1 (NEW) .]

6. Ingredient form. "Ingredient form" means the chemical compound such as salt, chelate, oxide, acid, etc., of an ingredient or the physical form of an ingredient.

[1979, c. 491, §1 (NEW) .]

7. Investigational allowance. "Investigational allowance" means an allowance for variations inherent in the taking, preparation, analysis or testing of an official sample of a plant or soil amendment.

[1979, c. 491, §1 (NEW) .]

8. Label. "Label" means any written, printed or graphic matter upon the immediate container or accompanying a plant or soil amendment.

[1979, c. 491, §1 (NEW) .]

9. Labeling. "Labeling" means any written, printed or graphic matter, upon or accompanying any plant or soil amendment, or advertisements, brochures, posters or television or radio announcements used in promoting the sale of the plant or soil amendment.

[1979, c. 491, §1 (NEW) .]

10. Net weight. "Net weight" means the weight of amending ingredients plus other ingredients as offered for sale, exclusive of the weight of any package or container.

[1979, c. 491, §1 (NEW) .]

11. Official sample. "Official sample" means any sample of plant or soil amendment taken by the commissioner and designated as "official" by the commissioner.

[1979, c. 491, §1 (NEW) .]

12. Other ingredients. "Other ingredients" means any ingredients present in plant or soil amendments which are not plant-amending ingredients or soil-amending ingredients, respectively.

[1979, c. 491, §1 (NEW) .]

13. Percent or percentage. "Percent" or "percentage" means percent or percentage by weight.

[1979, c. 491, §1 (NEW) .]

14. Person. "Person" means individual, partnership, association, firm or corporation, municipality or quasi-municipal entity.

[1985, c. 10, (AMD) .]

15. Plant-amending ingredients. "Plant-amending ingredients" means any substance applied to plants or seeds which is intended to improve germination, growth, yield, product quality, reproduction, flavor or other desirable characteristics of plants, except commercial fertilizers, soil amendments, agricultural liming materials, animal and vegetable manures, pesticides, plant regulators and other like materials, which may be exempted by rule.

[1979, c. 491, §1 (NEW) .]

16. Plant amendment. "Plant amendment" means any product distributed consisting of a plant-amending ingredient and other ingredients.

[1979, c. 491, §1 (NEW) .]

17. Registrant. "Registrant" means the person who registers plant or soil amendments under the provisions of this subchapter.

[1979, c. 491, §1 (NEW) .]

18. Soil-amending ingredient. "Soil-amending ingredient" means any substance which is intended to improve the chemical, biological or physical characteristics of the soil, except commercial fertilizers, plant-amending ingredients, agricultural liming materials, unmanipulated animal and vegetable manures, pesticides and other like material, exempted by rule.

[1979, c. 491, §1 (NEW) .]

19. Soil amendment. "Soil amendment" means any product distributed consisting of a soil-amending ingredient and other ingredients.

[1979, c. 491, §1 (NEW) .]

20. Ton. "Ton" means a net weight of 2,000 pounds avoirdupois.

[1979, c. 491, §1 (NEW) .]

SECTION HISTORY

1979, c. 491, §§1,2 (NEW). 1979, c. 731, §19 (AMD). 1985, c. 10, (AMD). 2011, c. 657, Pt. W, §6 (REV).

§777. LABELING

The following information shall appear on the face or display side of the container of any plant amendment or soil amendment offered for sale. It shall be in a readable and conspicuous form and shall be considered the label. If distributed in bulk, a written or printed statement of the required information shall accompany delivery and be supplied to the purchaser at time of delivery: [1979, c. 491, §1 (NEW).]

1. Net weight. Net weight;

[1979, c. 491, §1 (NEW) .]

2. Brand name. Brand name;

[1979, c. 491, §1 (NEW) .]

3. Guaranteed analysis. The name of each amending ingredient and the amount of each expressed in terms commonly applied to the ingredients, and the total percent of other ingredients;

[1979, c. 491, §1 (NEW) .]

4. Purpose of product. Purpose of product;

[1979, c. 491, §1 (NEW) .]

5. Direction for application. Direction for application; and

[1979, c. 491, §1 (NEW) .]

6. Name and address of the registrant. Name and address of the registrant.

[1979, c. 491, §1 (NEW) .]

No information shall appear on any package, label, delivery slip or advertising matter which is false or misleading. [1979, c. 491, §1 (NEW).]

The commissioner may require proof of claims made for any plant or soil amendment. If no claims are made he may request statements of usefulness and value of the plant or soil amendment. For verification of claims or statements the commissioner may rely on experimental data, evaluations or advice supplied from such sources as the Director of the Maine Agricultural Experiment Station. The verification shall be related to Maine conditions for which the product is intended. [1979, c. 491, §1 (NEW).]

The commissioner may allow labeling by volume rather than weight in packaging of plant or soil amendments. [1979, c. 491, §1 (NEW).]

SECTION HISTORY

1979, c. 491, §§1,2 (NEW).

§778. REGISTRATION

Each separately identified plant or soil amendment product shall be registered by the distributor before being distributed in this State. The application for registration shall be submitted to the commissioner on the form approved by him and shall be accompanied by a fee of \$25 per product. Upon approval by the commissioner a copy of the approved registration shall be furnished to the applicant. All registrations shall expire on December 31st of each year. A registrant shall submit to the commissioner a copy of labels and advertising literature with the registration request for each soil amendment. [1979, c. 491, §1 (NEW) .]

A distributor shall not be required to register any brand of plant or soil amendment which is already registered under this subchapter by another person, providing the label and advertising literature do not differ in any respect. [1979, c. 491, §1 (NEW).]

Any material intended for use in promoting any plant or soil amendment which is developed subsequent to application for acquisition shall be submitted to the commission for approval prior to use. The material shall not be so used without the approval of the commissioner. [1979, c. 491, §1 (NEW).]

The commissioner may by rule set the minimum percentage of a plant or soil-amending ingredient that shall be present before a plant or soil amendment can be registered. [1979, c. 491, §1 (NEW).]

The fees shall be deposited with the Treasurer of State and are appropriated for carrying out this subchapter. These funds shall not lapse. [1979, c. 491, §1 (NEW).]

SECTION HISTORY

1979, c. 491, §§1,2 (NEW).

§779. TONNAGE REPORTING

Every person who distributes a plant or soil amendment shall file with the commissioner on or before September 1st in each year, on forms supplied by him, the number of tons of each plant or soil amendment sold in the State during the 12 months preceding July 1st of the current year. [1979, c. 491, §1 (NEW).]

When more than one distributor is involved in the distribution of a plant or soil amendment product, the last registrant who distributes to a nonregistrant is responsible for reporting the tonnage. [1979, c. 491, §1 (NEW).]

SECTION HISTORY

1979, c. 491, §§1,2 (NEW).

§780. INSPECTION; SAMPLING; ANALYSIS; TESTING

The commissioner shall sample, inspect, analyze and test plant and soil amendment distributed within the State as he may deem necessary to determine whether the plant or soil amendments are in compliance with this subchapter. The commissioner may enter upon any public or private premises or carriers during regular business hours in order to have access to plant or soil amendments subject to this subchapter and to the records relating to their distribution. [1979, c. 491, §1 (NEW).]

The methods of analysis, testing and sampling shall be those adopted by the commissioner from sources such as the Association of Official Analytical Chemists, or other sources acceptable to the commissioner. [1979, c. 491, §1 (NEW).]

The results of official analyses or tests shall be distributed by the commissioner as provided by rule. [1979, c. 491, §1 (NEW).]

SECTION HISTORY

1979, c. 491, §§1,2 (NEW).

§781. DISPOSITION OF MISBRANDED OR ADULTERATED AMENDMENTS

If the analyses or tests show that any plant or soil amendments are misbranded or adulterated, disposition of the amendment shall be in accordance with rules. [1979, c. 491, §1 (NEW).]

The commissioner may adopt rules establishing tolerable deficiencies for guaranteed analyses. He may also establish a schedule of assessments for exceeding the tolerable deficiencies. The assessments shall be against the registrant of a soil or plant amendment. The assessments shall bear a reasonable relationship to the commercial value of the deficiency. [1979, c. 491, §1 (NEW).]

Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction for a judgment as to the justification of the assessments imposed. [1979, c. 491, §1 (NEW).]

The assessments shall in no manner be construed as limiting the consumer's right to bring a civil action in damage against the registrant paying the assessment. [1979, c. 491, §1 (NEW).]

For the purpose of determining commercial values to be applied under this section, the commissioner shall determine from the registrant's sales invoice the values charged for the plant or soil amending ingredients. If no invoice is available or if the invoice fails to provide sufficient information, the commissioner may use other methods to determine values. The values so determined shall be used in determining and levying assessments. [1979, c. 491, §1 (NEW).]

The assessment shall in no manner be construed as limiting the department's right to bring a civil action for a penalty against the registrant. [1979, c. 491, §1 (NEW).]

The assessments and penalties received shall be deposited with the Treasurer of State and are appropriated for carrying out this subchapter. These funds shall not lapse. [1979, c. 491, §1 (NEW).]

SECTION HISTORY

1979, c. 491, §§1,2 (NEW).

§782. MISBRANDING

No person shall distribute a misbranded plant or soil amendment. A plant or soil amendment shall be deemed to be misbranded if: [1979, c. 491, §1 (NEW).]

1. False labeling. Its labeling is false or misleading in any particular;

[1979, c. 491, §1 (NEW) .]

2. Not labeled. If it is not labeled as required in this subchapter; or

[1979, c. 491, §1 (NEW) .]

3. Nonconformance. If it does not conform to ingredient form or investigational allowances in the rules adopted by the commissioner.

[1979, c. 491, §1 (NEW) .]

SECTION HISTORY

1979, c. 491, §§1,2 (NEW).

§783. STOP SALE

The commissioner may issue and enforce a written order to the owner or custodian of any plant or soil amendment to stop sale, use or removal, when the commissioner finds the plant or soil amendment is being offered for sale in violation of any of the provisions of this subchapter, until the subchapter has been complied with and the soil amendment is released in writing by the commissioner, or the violation has been otherwise legally disposed of. The issuance of the order shall not be considered licensing or an adjudicatory proceeding, as defined by the Maine Administrative Procedure Act, Title 5, chapter 375. [1979, c. 491, §1 (NEW).]

SECTION HISTORY

1979, c. 491, §§1,2 (NEW).

§784. FORFEITURE FOR VIOLATIONS

Any person who violates any provision of this subchapter commits a civil violation for which a forfeiture of not less than \$200 shall be adjudged. Nothing in this subchapter shall be construed as requiring the commissioner to sue or to issue an order as a result of minor violations of this subchapter, when he believes that the public interest will best be served by a suitable written warning. In such a case the commissioner shall issue a written warning. [1979, c. 491, §1 (NEW).]

The commissioner may apply for a temporary or permanent injunction restraining any person from violating or continuing to violate this subchapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond being required of the State. [1979, c. 491, §1 (NEW).]

SECTION HISTORY

1979, c. 491, §§1,2 (NEW).

§785. RULES AND REGULATIONS

The commissioner is authorized pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, to adopt and enforce such rules as may be necessary for this subchapter. [1979, c. 491, §1 (NEW).]

SECTION HISTORY

1979, c. 491, §§1,2 (NEW).

§786. ADULTERATION

No person shall distribute an adulterated plant or soil amendment. A plant or soil amendment shall be deemed to be adulterated if: [1979, c. 491, §1 (NEW).]

1. Deleterious or harmful agent. It contains any deleterious or harmful agent in sufficient amount to render it injurious to beneficial plant, animal or aquatic life when applied in accordance with directions for use on the label, or if adequate warning statements and directions for use, which may be necessary to protect plant, animal or aquatic life, are not shown upon the label;

[1979, c. 491, §1 (NEW) .]

2. Inferior composition. If its composition falls below or differs from that which it is purported to possess by its labeling; or

[1979, c. 491, §1 (NEW) .]

3. Unwanted crop or weed seed. If it contains unwanted crop or weed seed or primary noxious or secondary noxious weed seed.

[1979, c. 491, §1 (NEW) .]

SECTION HISTORY

1979, c. 491, §§1,2 (NEW).

§787. CANCELLATION OR REFUSAL OF REGISTRATION

Consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, the commissioner may refuse registration of any brand of plant or soil amendment if he finds the brand of plant or soil amendment violates this subchapter, and may investigate whether the registration of any plant or soil amendment should be cancelled, in which case he may apply to the District Court for cancellation. [1979, c. 491, §1 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

SECTION HISTORY

1979, c. 491, §§1,2 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF).

Subchapter 6: FLOUR, BREAD AND ROLLS**§791. DEFINITIONS**

(REPEALED)

SECTION HISTORY

1979, c. 672, §A20 (RP).

§792. REINFORCEMENT OF FLOUR

(REPEALED)

SECTION HISTORY

1979, c. 672, §A20 (RP).

§793. VITAMINS AND MINERALS IN BREAD AND ROLLS

(REPEALED)

SECTION HISTORY

1979, c. 672, §A20 (RP).

§794. ENFORCEMENT

(REPEALED)

SECTION HISTORY

1977, c. 694, §§77-79 (AMD). 1979, c. 672, §A20 (RP).

§795. VIOLATIONS

(REPEALED)

SECTION HISTORY

1977, c. 696, §73 (RPR). 1979, c. 672, §A20 (RP).

Subchapter 7: FROZEN DAIRY PRODUCTS**§831. TITLE**

(REPEALED)

SECTION HISTORY

1979, c. 672, §A20 (RP).

§832. DEFINITIONS***(REPEALED)***

SECTION HISTORY

1979, c. 188, (AMD). 1979, c. 541, §A56 (AMD). 1979, c. 672, §A20 (RP).

§833. RULES AND REGULATIONS***(REPEALED)***

SECTION HISTORY

1977, c. 694, §§80-81 (AMD). 1979, c. 672, §A20 (RP).

§834. LICENSE APPLICATIONS***(REPEALED)***

SECTION HISTORY

1977, c. 694, §82 (AMD). 1979, c. 672, §A20 (RP).

§835. FEES***(REPEALED)***

SECTION HISTORY

1977, c. 694, §83 (AMD). 1979, c. 672, §A20 (RP).

§836. DISPOSITION OF FEES AND FORFEITURES***(REPEALED)***

SECTION HISTORY

1977, c. 696, §74 (RPR). 1979, c. 672, §A20 (RP).

§837. REVOCATION OR SUSPENSION OF LICENSE***(REPEALED)***

SECTION HISTORY

1977, c. 694, §§84-86 (AMD). 1979, c. 127, §44 (AMD). 1979, c. 672, §A20 (RP).

§838. PROHIBITIONS***(REPEALED)***

SECTION HISTORY

1979, c. 672, §A20 (RP).

§839. VIOLATIONS***(REPEALED)***

SECTION HISTORY

1977, c. 696, §75 (RPR). 1979, c. 672, §A20 (RP).

Subchapter 8: HAY

§871. MARKING OF HAY*(REPEALED)*

SECTION HISTORY

1977, c. 251, §1 (RP).

Subchapter 8-A: MEATS

§881. LABELING OF IMPORTED MEATS*(REPEALED)*

SECTION HISTORY

1965, c. 405, (NEW). 1967, c. 124, (RP).

Subchapter 8-B: MAPLE PRODUCTS

§891. EXPOSED FOR SALE

Maple products packed in any type or kind of container, and found in any place in the State of Maine, whether that place shall be a warehouse, packing house or any place where maple products are stored, shall be deemed to be exposed for sale under sections 891 to 898. [1967, c. 104, (NEW).]

SECTION HISTORY

1967, c. 104, (NEW).

§892. OFFICIAL STANDARDS*(REPEALED)*

SECTION HISTORY

1967, c. 104, (NEW). 1977, c. 694, §87 (AMD). 1991, c. 326, §1 (RP).

§892-A. OFFICIAL GRADE STANDARDS FOR MAPLE SYRUP*(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)*

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Brix" means the scale used to measure the specific gravity of maple syrup. [1991, c. 326, §2 (NEW).]

B. "Damage" means any defect that affects the color, appearance, flavor, aroma, edibility or shipping quality of maple syrup. [1991, c. 326, §2 (NEW).]

C. "Light transmission" means the ability of maple syrup to transmit light as determined optically by means of a spectrophotometer. [1991, c. 326, §2 (NEW).]

D. (TEXT EFFECTIVE UNTIL CONTINGENCY: See PL 2013, c. 117, §3) "Maple syrup," which may also be spelled "maple sirop" or "maple sirup," means the liquid derived by concentration and heat treatment of the sap of maple trees, (Acer) or by the solution in water of maple sugar or maple concentrate made from such sap. The solids content of maple syrup may not be less than 66% by weight or more than 69% by weight, as measured in Brix units at a temperature of 68 degrees Fahrenheit. [2007, c. 24, §1 (AMD).]

D. (TEXT EFFECTIVE ON CONTINGENCY: See PL 2013, c. 117, §3) "Maple syrup," which may also be spelled "maple sirop" or "maple sirup," means the liquid derived by concentration and heat treatment of the sap of maple trees, (Acer) or by the solution in water of maple sugar or maple concentrate made

from such sap. The solids content of maple syrup may not be less than 66% by weight or more than 68.9% by weight, as measured in Brix units at a temperature of 68 degrees Fahrenheit. [2013, c. 117, §1 (AMD); 2013, c. 117, §3 (AFF).]

E. The symbol "%Tc" means the percentage of light transmission through maple syrup, measurable by a spectrophotometer using matched square optical cells having a 10-millimeter light path at a wavelength of 560 nanometers, the color values being expressed in percent of light transmission as compared to A.R. Glycerol fixed at 100% transmission. [1991, c. 326, §2 (NEW).]

[2007, c. 24, §1 (AMD); 2013, c. 117, §1 (AMD); 2013, c. 117, §3 (AFF).]

2. (TEXT EFFECTIVE UNTIL CONTINGENCY: See PL 2013, c. 117, §3) **Maple syrup grades.** The following grades are established as the official maple syrup grade standards for the State.

A. "Grade A Light Amber" means pure maple syrup that is free of any material other than pure, clear liquid maple syrup in sanitary condition; has a color no darker than the federal Department of Agriculture's visual color standard light amber or has a color for light transmittance not less than 75.0%Tc; has a delicately sweet, original maple flavor; and has a density of at least the equivalent of 66.0° Brix at 60° Fahrenheit Modulus 145. Grade A Light Amber maple syrup must be free of sugar crystals and may not be damaged in any way. [1991, c. 326, §2 (NEW).]

B. "Grade A Medium Amber" means pure maple syrup that is free of any material other than pure, clear liquid maple syrup in sanitary condition; has a color no darker than the federal Department of Agriculture's visual color standard medium amber or has a color for light transmittance between the range of 74.9%Tc to 60.5%Tc; and may have a flavor that is more pronounced than that of Grade A Light Amber, but that is not strong or unpleasant. Grade A Medium Amber must meet the density requirement of Grade A Light Amber. Grade A Medium Amber maple syrup must be free of sugar crystals and may not be damaged in any way. [1991, c. 326, §2 (NEW).]

C. "Grade A Dark Amber" means pure maple syrup that is free of any material other than pure, clear liquid maple syrup in sanitary condition; has a color no darker than the federal Department of Agriculture's visual color standard dark amber or has a color for light transmittance between the range of 60.4%Tc to 44.0%Tc; and may have a flavor that is stronger than that of Grade A Medium Amber, but that is not sharp, bitter, buddy or off-flavor. Grade A Dark Amber must meet the density requirement of Grade A Light Amber. Grade A Dark Amber maple syrup must be free of sugar crystals and may not be damaged in any way. [1991, c. 326, §2 (NEW).]

D. "Grade A Extra Dark Amber" means pure maple syrup that is free of any material other than pure, clear liquid maple syrup in sanitary condition; has a color for light transmittance between the range of 43.9%Tc to 27.0%Tc; and may have a flavor stronger than Grade A Dark Amber. Grade A Extra Dark Amber must meet the density requirements of Grade A Light Amber. Grade A Extra Dark Amber maple syrup must be free of sugar crystals and may not be damaged in any way. [1991, c. 326, §2 (NEW).]

E. "Commercial Grade" means pure maple syrup that is free of any material other than pure, clear liquid maple syrup in a sanitary condition; has a color for light transmittance less than 27.0%Tc; and may have a strong flavor. Commercial Grade maple syrup must be free of sugar crystals and may not be damaged in any way. Commercial Grade maple syrup may not be placed in packaged maple syrup containers and may not be sold, offered for sale or exposed for sale as packaged maple syrup. [1991, c. 326, §2 (NEW).]

F. "Substandard" means bulk maple syrup that fails to meet the requirements of any other grade. Such syrup may not be placed in packaged maple syrup containers and may not be sold, offered for sale or exposed for sale as packaged maple syrup. [1991, c. 326, §2 (NEW).]

[1991, c. 326, §2 (NEW).]

2. (TEXT EFFECTIVE ON CONTINGENCY: See PL 2013, c. 117, §3) **Maple syrup grades.** The following grades are established as the official maple syrup grade standards for the State.

A. [2013, c. 117, §3 (AFF); 2013, c. 117, §2 (RP).]

B. [2013, c. 117, §3 (AFF); 2013, c. 117, §2 (RP).]

C. [2013, c. 117, §3 (AFF); 2013, c. 117, §2 (RP).]

D. [2013, c. 117, §3 (AFF); 2013, c. 117, §2 (RP).]

E. [2013, c. 117, §3 (AFF); 2013, c. 117, §2 (RP).]

F. [2013, c. 117, §3 (AFF); 2013, c. 117, §2 (RP).]

G. "Grade A Golden" means pure maple syrup that is free of any material other than pure, clear liquid maple syrup in sanitary condition; has a color for light transmittance of not less than 75%Tc; has a delicate taste; and has a light to more pronounced golden color. Grade A Golden maple syrup must be free of sugar crystals and may not be damaged in any way. [2013, c. 117, §2 (NEW); 2013, c. 117, §3 (AFF).]

H. "Grade A Amber" means pure maple syrup that is free of any material other than pure, clear liquid maple syrup in sanitary condition; has a color for light transmittance of less than 75%Tc but not less than 50%Tc; has a rich or full-bodied taste; and has a light amber color. Grade A Amber maple syrup must be free of sugar crystals and may not be damaged in any way. [2013, c. 117, §2 (NEW); 2013, c. 117, §3 (AFF).]

I. "Grade A Dark" means pure maple syrup that is free of any material other than pure, clear liquid maple syrup in sanitary condition; has a color for light transmittance of less than 50%Tc but not less than 25%Tc; has a more robust or stronger taste than maple syrup in lighter color classes; and has a dark color. Grade A Dark maple syrup must be free of sugar crystals and may not be damaged in any way. [2013, c. 117, §2 (NEW); 2013, c. 117, §3 (AFF).]

J. "Grade A Very Dark" means pure maple syrup that is free of any material other than pure, clear liquid maple syrup in sanitary condition; has a color for light transmittance of less than 25%Tc; has a very strong taste; and has a very dark color. Grade A Very Dark maple syrup must be free of sugar crystals and may not be damaged in any way. [2013, c. 117, §2 (NEW); 2013, c. 117, §3 (AFF).]

K. "Processing Grade" means any maple syrup that does not qualify for Grade A labeling, including off-flavored maple syrup. Processing Grade maple syrup may not be sold in retail markets and must be packed in 5-gallon or larger containers. [2013, c. 117, §2 (NEW); 2013, c. 117, §3 (AFF).]

[2013, c. 117, §2 (AMD); 2013, c. 117, §3 (AFF) .]

SECTION HISTORY

1991, c. 326, §2 (NEW). 2007, c. 24, §1 (AMD). 2013, c. 117, §§1, 2 (AMD). 2013, c. 117, §3 (AFF).

§893. LABELING OF MAPLE SYRUP

All containers of maple syrup sold or offered for sale for human consumption by any person, partnership, association, firm or corporation shall be labeled with the grade, the volume, name and address of the producer or packer, together with the producer's or packer's seal in such form as approved by the commissioner on the cap of the container which must be so affixed that the container cannot be opened until such seal is broken. Any marking which indicates pure Maine maple syrup shall be used exclusively upon pure maple syrup produced within the State of Maine and which has not been bleached or lightened in color by artificial means. [1979, c. 541, Pt. A, §57 (AMD).]

The words "Maine Maple" shall not be used alone or in combinations with other words on a label or container to designate the flavor of the contents unless all of the maple flavoring of the contents is a pure maple, produced in this State. [1967, c. 104, (NEW).]

SECTION HISTORY

1967, c. 104, (NEW). 1979, c. 541, §A57 (AMD).

§894. LABELING CONTAINERS

Any person, partnership, association, firm or corporation shall not sell or offer for sale in any place, or serve in any hotel, restaurant or other public eating place any maple sugar, maple confection or candy or maple syrup or any product labeled or represented as such that is in any way combined, interfused or diluted with cane or other sugars or any substance without distinctly marking, stamping or labeling the article or the package containing the same or the advertisement of or menu statement thereof with an accurate and descriptive name of such article and in the case of maple sugar and maple syrup, the percentage in which maple sugar or maple syrup enters into its composition. In case of maple confection or candy a list of the ingredients thereof shall be listed in the order of their volume. The word "maple", "mapled", "mapleing" and words of similar import, except as printed in the percentage statement shall not appear in any manner on the said article in which a product of maple sap is so combined, interfused or diluted, unless the word "blend" appears immediately before, after, above or below said word or words of similar import in equal prominence with the word "maple" or similar term, or unless the term "maple flavored" appears in similar fashion on the label. [1967, c. 104, (NEW).]

SECTION HISTORY

1967, c. 104, (NEW).

§895. ADVERTISING

Any person, partnership, association, firm or corporation, when quoting the price, shall include the grade on all flyers, newspapers, radio and television advertisements. [1967, c. 104, (NEW).]

SECTION HISTORY

1967, c. 104, (NEW).

§896. EXEMPTIONS

Any producer selling to another producer or packer is exempt, except if containers are labeled with a grade, the contents of that container shall meet the grade marked on that container. [1979, c. 541, Pt. A, §58 (AMD).]

SECTION HISTORY

1967, c. 104, (NEW). 1979, c. 541, §A58 (AMD).

§897. ENFORCEMENT; JURISDICTION

The commissioner shall diligently enforce all of the provisions of sections 891 to 898. He, either in person or by a duly authorized representative, shall have free access, ingress and egress to any place or building, store, gift shop or any building wherein maple or maple products are packed, stored, transported, sold or offered or exposed for sale or for transportation. He may also in person, or by a duly authorized representative, open any container and may upon tendering market price, take samples therefrom. He may recover forfeitures imposed for violation of those sections in a civil action brought in his own name and if he prevails in that action, shall recover full costs. [1977, c. 696, §76 (AMD).]

All money and forfeitures received by the commissioner for violations of sections 891 to 898 shall be paid by him to the Treasurer of State and shall be appropriated for carrying out those sections. [1977, c. 696, §77 (RPR).]

The commissioner shall, in a manner consistent with the Maine Administrative Procedure Act, establish such rules and regulations as may be needed for the proper enforcement of sections 891 to 898. [1977, c. 694, §88 (RPR).]

SECTION HISTORY

1967, c. 104, (NEW). 1977, c. 694, §88 (AMD). 1977, c. 696, §§76,77 (AMD).

§898. VIOLATIONS

Any person, firm or corporation who shall violate any of the provisions of sections 891 to 898 or neglect or refuse to comply with any of the provisions required in those sections or in any way violates any of those provisions commits a civil violation for which the following forfeitures may be adjudged: [1977, c. 696, §78 (RPR).]

1. First violation. For the first violation, a forfeiture not to exceed \$100; and

[1977, c. 696, §78 (NEW) .]

2. Subsequent violations. For each subsequent violation, a forfeiture not to exceed \$200.

[1977, c. 696, §78 (NEW) .]

SECTION HISTORY

1967, c. 104, (NEW). 1977, c. 696, §78 (RPR).

Subchapter 9: MINERAL OILS

§911. DEFINITION

(REPEALED)

SECTION HISTORY

1979, c. 672, §A21 (RP).

§912. USE RESTRICTED

(REPEALED)

SECTION HISTORY

1979, c. 672, §A21 (RP).

§913. VIOLATIONS

(REPEALED)

SECTION HISTORY

1977, c. 696, §79 (RPR). 1979, c. 672, §A21 (RP).

Subchapter 10: POTATOES

Article 1: GRADING

§950. DEFINITIONS

1. Exposed for sale. Potatoes packed in any type or kind of container, and found in any place in the State of Maine, whether that place shall be a depot, station, warehouse, packing house, boat dock or any place where potatoes are held in storage, or loaded on a boat, truck, trailer, or railroad car or motor vehicle, shall be deemed to be exposed for sale under this subchapter.

Potatoes in any dwelling house for the purpose of consumption on the premises shall not be deemed to be exposed for sale.

[1965, c. 219, §1 (NEW) .]

2. Consumer pack. "Consumer pack" means a unit of potatoes contained in a bag, crate or any other type of container.

[1997, c. 388, §1 (AMD) .]

3. Shipping season. "Shipping season" means the period after August 1st of each year and before July 31st of the following year.

[1981, c. 513, §2 (NEW) .]

SECTION HISTORY

1965, c. 219, §1 (NEW). 1981, c. 513, §2 (AMD). 1997, c. 388, §1 (AMD).

§951. OFFICIAL STANDARDS

The Commissioner of Agriculture, Conservation and Forestry is authorized and empowered, after holding public hearings in a manner consistent with the Maine Administrative Procedure Act, to establish and promulgate official definitions and standards for grading, or classifying, packing and labeling potatoes and to change such official standards from time to time. [1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §6 (REV).]

Such official standards shall not be lower in their requirements than the minimum requirements of the official standards for corresponding grades or classifications as promulgated from time to time by the Secretary of Agriculture of the United States, commonly known as U. S. Grades. [1965, c. 219, §2 (RPR) .]

Notwithstanding the provisions of article 4, the commissioner after consultation with the Maine Potato Board may require, by rules adopted pursuant to the Maine Administrative Procedure Act, the inspection of all consumer packs of potatoes for conformity with the U.S. #1 grade or other grades. Inspection under any rule adopted pursuant to this section must be performed by a licensed federal-state potato inspector, state potato inspector or seed potato inspector. At the request of and in consultation with the Maine Potato Board, the commissioner shall initiate rulemaking to require inspection of consumer packs of potatoes. [1997, c. 388, §2 (AMD) .]

A person who violates rules adopted under this section commits a civil violation for which a forfeiture not to exceed \$1,000 for the first offense and \$2,000 for any subsequent offense may be adjudged. [1995, c. 298, §2 (NEW) .]

SECTION HISTORY

1965, c. 219, §2 (RPR). 1977, c. 694, §89 (AMD). 1979, c. 731, §19 (AMD). 1995, c. 298, §2 (AMD). 1997, c. 388, §2 (AMD). 2011, c. 657, Pt. W, §6 (REV).

§951-A. MINIMUM STANDARDS FOR PLANTING

A person may not plant seed potatoes in the State, the product of which is intended for sale, in lots of one or more acres unless that seed is certified in accordance with rules adopted by the commissioner. These rules may include without limitation requirements for filing reports with the commissioner and requirements for filing records to the commissioner or the commissioner's designee, upon request, that demonstrate that the potatoes planted have been properly certified. A person, firm or corporation that plants potatoes in violation of this section is subject to a fine of \$1,000 plus not more than \$400 per acre for each acre or part of an acre planted. Failure to file complete and accurate reports or failure to provide complete and accurate records in accordance with the rules adopted by the commissioner is an additional violation resulting in a separate fine of not less than \$200 nor more than \$1,000 for each such failure. Any fine collected under this section is payable to the Treasurer of State and credited without lapsing to the commissioner for the enforcement of this section. The commissioner shall adopt and may amend rules consistent with the Maine Administrative Procedure Act to implement this section. In addition to the enforcement powers and penalties established in this section, the commissioner may issue subpoenas to any individual in order to compel delivery of any reports or records required under this section. These subpoenas are enforceable by any court of competent jurisdiction. [2013, c. 475, §1 (AMD).]

In the event there is not available to be planted in Maine in any year a sufficient volume of Maine potato seed meeting Maine certified seed potato disease standards, in any or all varieties, the commissioner may, upon application of one or more growers, permit seed of a higher disease content to be planted for that growing season. [1979, c. 532, §1 (NEW).]

Each grower shall keep records of seed planted by variety and by fields during the growing season and report planting records as may be requested by the commissioner. Notwithstanding Title 1, chapter 13, records pertaining to minimum standards for planting received or kept by the Department of Agriculture, Conservation and Forestry are confidential and not available for inspection. The confidential status terminates when the records are subpoenaed as evidence in any proceeding to enforce a provision of this section, or in any prosecution for a criminal violation. A grower may authorize in writing the disclosure of records pertaining to minimum standards for planting. [1989, c. 783, (AMD); 2011, c. 657, Pt. W, §5 (REV).]

SECTION HISTORY

1979, c. 532, §1 (NEW). 1985, c. 184, (AMD). 1989, c. 783, (AMD). 2011, c. 657, Pt. W, §5 (REV). 2013, c. 475, §1 (AMD).

§951-B. COMPLIANCE WITH OFFICIAL STANDARDS

To achieve compliance with official standards, the commissioner may adopt, consistent with this Article and with section 402, a fee schedule for inspection of potatoes. The potato inspection fee schedule may provide for a lower inspection rate for any person who is packing potatoes in a Maine bag as defined by section 1032, subsection 3. [1981, c. 540, §1 (AMD).]

SECTION HISTORY

1981, c. 513, §3 (NEW). 1981, c. 540, §1 (AMD).

§952. BRANDING

It shall be unlawful for any person, firm, association, organization or corporation, or agent, representative or assistant to any person, firm, association, organization or corporation to expose for sale, or sell, at wholesale or retail, to ship, deliver or consign or have in possession potatoes prepared for market unless in containers which have been legibly and conspicuously tagged, branded, labeled or stenciled with the name and address of the person or persons responsible for packing and the name of the grade, net weight and the word "potatoes." All potatoes packed in this State must be packed in containers which conspicuously bear the name of the country where the potatoes were grown. The person or persons responsible for grading shall be as follows: If the violation is discovered in the packing house then the person or persons packing

the potatoes shall be responsible; if the violation is discovered at any other place, then the person or persons whose name appears on the container shall be responsible. Each lot of potatoes sold at wholesale shall be accompanied by a bill of lading or invoice stating grade, name and address of packer, name and address of the consignor, name and address of the consignee, date of loading and name of loading point. The bill of lading or invoice shall be prima facie evidence in any court of the person or persons packing potatoes. It shall be conclusive evidence that potatoes are exposed for sale when packed in containers for delivery or transit, or when the same are in the process of delivery or transit, or are located at a depot, station, warehouse, packing house, boat dock or any place where potatoes are held in storage, or loaded on a boat, truck, trailer or railroad car, for immediate or future sale or transit. For the purposes of this section only, potatoes located at warehouses, or packing houses at point of origin, shall not be deemed exposed for sale until they are loaded or are in the process of being loaded in vehicles of transportation. When a violation of this section occurs, it is deemed to have taken place at the loading point or where such violation first became evident to the commissioner or his duly authorized representative. Upon request and submission of proof to the Department of Agriculture, Food and Rural Resources by a packer that he has on hand a supply of bags that do not meet the requirement that the bags conspicuously bear the name of a country where the potatoes were grown, and those bags were purchased or contracted for before September 23, 1983, the Commissioner of Agriculture, Food and Rural Resources shall exempt the packer from that requirement until January 1, 1986. The commissioner, at his discretion and upon unusual circumstances, may grant packers extended waivers until January 1, 1987. [1985, c. 655, §1 (AMD).]

SECTION HISTORY

1965, c. 219, §3 (RPR). 1965, c. 464, (AMD). 1979, c. 541, §A59 (AMD). 1981, c. 513, §4 (AMD). 1983, c. 462, (AMD). 1985, c. 5, (AMD). 1985, c. 655, §1 (AMD).

§953. FALSE OR MISLEADING POTATO BRANDING OR LABELING

Notwithstanding section 952, it shall be unlawful for any person, firm, association, organization or corporation to expose for sale or sell at full sale or retail, to ship, deliver or consign, or have in possession potatoes prepared for market in containers which bear any statements, design or device regarding such potatoes which shall be false or misleading, in any particular, or potatoes packed in such manner that the face or shown surface is not an average of the contents of the package, or potatoes that fail to meet the grade requirements established and promulgated by the commissioner or potatoes that are accompanied by a bill of lading false or misleading in any particular. When a violation of this section occurs, it is deemed to have taken place at the point where such violation first became evident to the commissioner or his duly authorized representative. [1981, c. 513, §5 (AMD).]

SECTION HISTORY

1965, c. 219, §4 (RP). 1971, c. 271, (NEW). 1979, c. 541, §A60 (AMD). 1981, c. 513, §5 (AMD).

§954. SALE WITHOUT GRADING BY GROWER

No provisions of sections 951 to 957 shall be construed to prevent a grower or shipper of potatoes from selling or delivering the same within the State unpacked, or selling his crop in bulk, or any part thereof, to a packer for grading, packing or storage within the State; nor shall any provision of said sections prevent any person from manufacturing the same into any by-product, or from selling the same unpacked to any person actually engaged in the operation of a commercial by-products factory for the sole and express purpose of being used within the State in the manufacture of a by-product. [1965, c. 219, §5 (AMD).]

SECTION HISTORY

1965, c. 219, §5 (AMD).

§954-A. SEIZURE OF MISBRANDED, MISLABELED OR MISREPRESENTED PRODUCT

Whenever the commissioner or his duly authorized representative shall find from inspection, as authorized in section 956, that potatoes are being sold, exposed for sale, or shipped for sale in containers, and the containers bear any statements, design or device regarding such potatoes which shall be false or misleading, in any particular, or if potatoes are packed in such manner that the face or shown surface is not an average of the contents of the package, or if such potatoes fail to meet the minimum grade requirements established as a state grade by the commissioner, or if the potatoes are not accompanied by a proper bill of lading or invoice as provided by section 952, then the commissioner, or his duly authorized representative, may seize such potatoes so that they cannot be sold, offered, exposed for sale or transported. Any potatoes seized by the commissioner or his duly authorized representative for failure to meet the minimum grade requirements established by the commissioner shall be returned to the person, firm, or corporation responsible for packing the potatoes at the point of origin. Misbranded potatoes shall not be exposed or offered for sale or transported until such potatoes have been regraded and are accompanied by a federal-state inspection certificate showing that the potatoes meet the minimum grade requirements specified on the container. [1975, c. 687, §1 (AMD).]

Notwithstanding section 957, any violation of this section shall constitute a separate civil violation with a minimum penalty of \$1,000 for each occurrence. Each lot of potatoes exposed or offered for sale, transported, shipped or dumped without the requisite federal and state inspection certificate required under this section showing that the potatoes meet the minimum grade requirements specified on the container shall constitute a separate violation. There is no violation if the potatoes are removed from the containers under the supervision of the Department of Agriculture, Conservation and Forestry and are to be used for processing or charitable purposes. [1989, c. 605, (NEW); 1989, c. 878, Pt. D, §5 (AMD); 2011, c. 657, Pt. W, §5 (REV).]

SECTION HISTORY

1965, c. 219, §6 (NEW). 1975, c. 687, §1 (AMD). 1989, c. 605, (AMD). 1989, c. 878, §D5 (AMD). 2011, c. 657, Pt. W, §5 (REV).

§955. EXEMPTIONS

Certified seed potatoes as defined by chapter 401 are exempted from sections 951 to 957, except as may otherwise be promulgated by the commissioner.

§956. ENFORCEMENT; JURISDICTION

The commissioner shall diligently enforce all of the provisions of sections 951 to 957. The commissioner, either in person or by a duly authorized representative, has free access, ingress and egress to any place or field or any building, boat, truck, trailer, railroad car, warehouse, depot, station, packing house, boat dock or any building wherein potatoes are packed, stored, transported, sold, offered or exposed for sale or for transportation or for planting. The commissioner may also, in person, or by duly authorized representative, open any container and may take samples therefrom. The commissioner shall, upon written request, pay the packer the fair market value of any sample retained or destroyed by the commissioner. The commissioner may recover fines imposed for violation of those sections in a civil action brought in the commissioner's own name and, if the commissioner prevails in that action, recover full costs. [2013, c. 475, §2 (AMD).]

Any person who refuses or interferes with access by the commissioner or the commissioner's representative as provided for in this section, following oral request and warning given by the commissioner or the commissioner's representative regarding the contents of this section, is guilty of a separate civil violation under section 957. [1993, c. 699, §1 (AMD).]

All fees received under sections 951 to 957 by the commissioner and all money and forfeitures received by him under those sections shall be paid by him to the Treasurer of State and shall be appropriated for carrying out those sections. The commissioner shall, in a manner consistent with the Maine Administrative Procedure Act, establish such rules as may be needed for the proper enforcement of sections 951 to 957. [1979, c. 541, Pt. B, §6 (RPR).]

SECTION HISTORY

1965, c. 219, §7 (AMD). 1977, c. 694, §90 (AMD). 1977, c. 696, §§80,81 (AMD). 1979, c. 541, §B6 (AMD). 1979, c. 731, §§10,11 (AMD). 1985, c. 655, §2 (AMD). 1993, c. 699, §1 (AMD). 2013, c. 475, §2 (AMD).

§957. VIOLATIONS

Any person, firm or corporation who violates any of the provisions of sections 952 to 957 or to Article 4 or neglects or refuses to comply with any of the provisions required therein or in any way violates any of those provisions shall be subject to warning and to civil penalties payable to the State to be recovered in a civil action as provided in this section. [1981, c. 513, §6 (RPR).]

1. First violation.

[1993, c. 699, §2 (RP) .]

1-A. Penalty. The following civil penalties apply:

A. For the first violation committed during a shipping season, a forfeiture of not more than \$200; [1993, c. 699, §3 (NEW).]

B. For the 2nd violation committed during a shipping season, a forfeiture of \$1,000; and [1993, c. 699, §3 (NEW).]

C. For the 3rd and subsequent violations committed during a shipping season, a forfeiture of not less than \$1,500. [1993, c. 699, §3 (NEW).]

[1993, c. 699, §3 (NEW) .]

1-B. Mandatory inspection. After notice and an opportunity for hearing in an adjudicatory proceeding in accordance with the Maine Administrative Procedure Act, the commissioner may order a person the commissioner finds has violated this chapter 3 or more times in a shipping season to undergo mandatory inspection in the manner provided in section 446 for a period of one year from the date of the final administrative determination. If the inspection order is stayed during appeal of the administrative determination, the period of the stay is not counted in calculating the one-year period. A person subject to mandatory inspection under this subsection may not ship potatoes packed in consumer packs unless the packs are accompanied by an unrestricted, original certificate of inspection covering the entire manifest, or an original or a copy of a certificate of inspection positively identifying the actual bags or containers in the shipment. Shipment of potatoes without the certificate required by this subsection is a separate violation subject to the penalties provided by this section.

[1993, c. 699, §3 (NEW) .]

2. Violations subsequent to the first.

[1993, c. 699, §4 (RP) .]

2-A. No violation. There shall be no violation of section 952 or 953 where the lot of potatoes involved has been segregated and conspicuously marked with a sign stating that the potatoes are known to be out of grade or that the potatoes are awaiting state inspection under section 1036; provided that no such potatoes

may be moved without consent of the department, except for purposes of repacking or regrading; and provided further that the department has been notified of the location and quantity of the potatoes involved. Any potatoes segregated under this subsection must be inspected by the department prior to shipment.

[1985, c. 655, §3 (NEW) .]

3. Third and subsequent violations.

[1981, c. 513, §6 (RP) .]

SECTION HISTORY

1965, c. 219, §8 (AMD). 1975, c. 687, §2 (RPR). 1977, c. 696, §82 (RPR). 1979, c. 454, (AMD). 1979, c. 532, §2 (AMD). 1981, c. 513, §6 (RPR). 1985, c. 655, §3 (AMD). 1993, c. 699, §§2-4 (AMD).

§958. LAW ENFORCEMENT OFFICERS

In enforcing this Article, the commissioner or any other duly authorized representative shall be considered law enforcement officers only for purposes of service of process consistent with Title 17-A, section 17, subsection 1. [1979, c. 731, §2 (NEW).]

SECTION HISTORY

1979, c. 731, §12 (NEW).

Article 1-A: CENTRAL STORAGE, PACKING AND MARKETING

§970. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [2013, c. 403, §2 (NEW).]

1. Board. "Board" means the Maine Potato Board established in Title 36, section 4603.

[2013, c. 403, §2 (NEW) .]

2. Committee. "Committee" means the Potato Marketing Improvement Fund Committee under section 972-B.

[2013, c. 403, §2 (NEW) .]

3. Fund. "Fund" means the Potato Marketing Improvement Fund established in Title 10, section 1023-N.

[2013, c. 403, §2 (NEW) .]

SECTION HISTORY

2013, c. 403, §2 (NEW).

§971. PURPOSE

(REPEALED)

SECTION HISTORY

1981, c. 513, §7 (NEW). 2005, c. 382, §A5 (RP).

§972. POTATO MARKETING IMPROVEMENT COMMITTEE**(REPEALED)**

SECTION HISTORY

1981, c. 513, §7 (NEW). 1983, c. 812, §45 (AMD). 1985, c. 779, §35 (AMD). 1987, c. 319, §1 (AMD). 1987, c. 534, §§B2,B23 (AMD). 1987, c. 769, §A35 (RPR). 1989, c. 503, §B42 (AMD). 2001, c. 125, §1 (AMD). 2005, c. 335, §2 (RP).

§972-A. ADVISORY ROLE OF MAINE POTATO BOARD**(REPEALED)**

SECTION HISTORY

2005, c. 335, §3 (NEW). 2013, c. 403, §3 (RP).

§972-B. POTATO MARKETING IMPROVEMENT FUND COMMITTEE

1. Members. The Potato Marketing Improvement Fund Committee, as established in Title 5, section 12004-H, subsection 10-A, consists of:

- A. The commissioner or the commissioner's designee; and [2013, c. 403, §4 (NEW).]
- B. Six members appointed by the board, 2 of whom must represent the processing sector of the potato industry, 2 of whom must represent the seed sector of the potato industry and 2 of whom must represent the tablestock sector of the potato industry. [2013, c. 403, §4 (NEW).]

[2013, c. 403, §4 (NEW) .]

2. Duties. The committee shall:

- A. Advise the board on the development and implementation of programs and activities that improve the economic viability of the potato industry; [2013, c. 403, §4 (NEW).]
- B. Advise the board concerning the funding and expenditures of the fund; and [2013, c. 403, §4 (NEW).]
- C. Make recommendations to the board on authorized uses of the fund and activities relating to the fund other than activities relating to the processing of loan applications or the servicing and administration of loans. [2013, c. 403, §4 (NEW).]

[2013, c. 403, §4 (NEW) .]

SECTION HISTORY

2013, c. 403, §4 (NEW).

§973. POTATO MARKETING IMPROVEMENT FUND**(REPEALED)**

SECTION HISTORY

1979, c. 731, §§5-7,19 (AMD). 1981, c. 513, §7 (NEW). 1987, c. 319, §2 (AMD). 1987, c. 727, §§1,2,4 (AMD). 1987, c. 754, §1 (AMD). 1989, c. 502, §B3 (RPR). 1993, c. 699, §5 (AMD). 2001, c. 125, §2 (RP).

§973-A. ADMINISTRATION OF POTATO MARKETING IMPROVEMENT FUND

The board shall administer the fund. [2013, c. 403, §5 (AMD).]

SECTION HISTORY

2001, c. 125, §3 (NEW). 2013, c. 403, §5 (AMD).

§974. STATE LOANS

(REPEALED)

SECTION HISTORY

1981, c. 513, §7 (NEW). 1987, c. 319, §3 (RP).

§974-A. STATE LOANS

1. State loans. State loans are subject to the following conditions.

A. No state loan for any project under this article, the total cost of which exceeds \$50,000, may exceed 45% of the project cost and no state loan may be provided for such a project unless the applicant demonstrates a commitment of private funds of at least 10% of the total cost of the project, except that, in order to encourage the undertaking of cooperative projects by 2 or more farmers, no state loan for such a project may exceed 50% of the total cost of the project and no state loan may be provided unless the cooperating farmers as a group demonstrate a commitment of private funds of at least 5% of the total cost of the project. [1987, c. 319, §4 (NEW).]

B. No state loan for any project under this article, the total cost of which is \$50,000 or less, may exceed 55% of the total cost of the project. [1987, c. 319, §4 (NEW).]

C. State loans shall be at the interest rate established pursuant to subsection 2. [1987, c. 319, §4 (NEW).]

D. Other terms and conditions prescribed by rule by the board upon consultation with the committee. [2013, c. 403, §6 (AMD).]

[2013, c. 403, §6 (AMD) .]

2. State loan interest rate. The interest rate for state loans is 5%. Loans current on April 21, 1988 must be renegotiated to an interest rate of 5%.

A fee for administrative costs, which must be at a rate set by rule by the board but may not exceed 1% of the loan, must be charged on all loans made for projects the total cost of which exceeds \$50,000. This fee must be deposited in the fund.

[2013, c. 403, §7 (AMD) .]

3. Approval of loans and grants. The commissioner has authority to approve all loans and grants from the fund.

[2013, c. 403, §8 (NEW) .]

SECTION HISTORY

1987, c. 319, §4 (NEW). 1987, c. 754, §2 (AMD). 1999, c. 127, §A14 (AMD). 2001, c. 125, §4 (AMD). 2005, c. 335, §4 (AMD). 2013, c. 403, §§6-8 (AMD).

§975. GRANTS*(REPEALED)*

SECTION HISTORY

1987, c. 727, §2 (NEW). 1987, c. 727, §4 (RP). 1987, c. 754, §3 (NEW).
 1989, c. 502, §§B4,B5 (RPR).

§975-A. INTEREST ON POTATO MARKETING IMPROVEMENT FUND BALANCE

All or any portion of the interest earned or accruing on the cash balance of the Potato Marketing Improvement Fund may be used for grants to partially or fully fund research projects to study and assess technical problems experienced with new and retrofitted storage facilities and to develop means of dealing with such problems, or to examine, monitor and develop new technologies for the production, storage and handling of potatoes or to fund programs and activities that improve the economic viability of the potato industry. [2005, c. 335, §5 (AMD).]

SECTION HISTORY

1993, c. 410, §HHHH1 (NEW). 1997, c. 388, §3 (AMD). 2005, c. 335, §5 (AMD).

§976. AROOSTOOK COUNTY OFFICE

The board shall maintain or arrange for the maintenance of an office in Aroostook County located in a town most convenient to the largest number of potential users of the fund. This office must be staffed by one or more business development specialists primarily responsible for work associated with the fund as well as other activities as defined by the board. The business development specialists must be available in the Aroostook County office on a regular basis. [2013, c. 403, §9 (AMD).]

Should the performance of the functions of the business development specialists be contracted for, this contract must be made by the board and must be awarded through competitive bidding. [2013, c. 403, §9 (AMD).]

SECTION HISTORY

1989, c. 502, §B6 (NEW). 2005, c. 335, §6 (AMD). 2013, c. 403, §9 (AMD).

§977. POTATO MARKETING IMPROVEMENT FUND OPERATING ACCOUNT

There is established a Potato Marketing Improvement Fund Operating Account. This account draws funds from the fund on a periodic basis to be determined by the board to cover the costs of administering the fund and any grants made. [2013, c. 403, §10 (AMD).]

SECTION HISTORY

2001, c. 125, §5 (NEW). 2013, c. 403, §10 (AMD).

Article 2: MARKETING**§991. TITLE**

Sections 991 to 994 may be known and cited as the "Maine Potato Marketing Act." [1999, c. 2, §7 (COR).]

SECTION HISTORY

1981, c. 154, §§2,3 (RP). 1981, c. 513, §11 (AMD). RR 1999, c. 2, §7 (COR).

§992. PURPOSES

The purposes of sections 991 to 994 are: [1999, c. 2, §8 (COR).]

- 1. Correlate marketing.** To enable potato producers of this State, with the aid of the State, more effectively to correlate the marketing of their potatoes with market demands therefor;
- 2. Uniform grading.** To provide for uniform grading and proper preparation of potatoes for market;
- 3. Develop markets.** To provide methods and means for the development of new and larger markets for potatoes grown within this State;
- 4. Orderly marketing.** To establish orderly marketing of potatoes grown within this State;
- 5. Eliminate economic waste.** To eliminate or reduce economic waste in the marketing of potatoes.

SECTION HISTORY

1981, c. 154, §§2,3 (RP). 1981, c. 513, §11 (AMD). RR 1999, c. 2, §8 (COR).

§993. DEFINITIONS

As used in sections 991 to 994, unless the context otherwise indicates, the following terms have the following meanings. [1999, c. 2, §9 (COR).]

1. Committee.

[1999, c. 668, §69 (RP) .]

2. Consumer pack. "Consumer pack" means a unit of less than 50 pounds new weight of potatoes contained in a bag, crate or any other type of container.

3. District. "District" means each one of the geographical divisions of the production area established as follows:

- A. District No. 1. Township 11, Range 8, Townships 11, 12, 13 and 14, Range 7, Township 14, Range 6, Townships 14, 15, 16, Range 5, Townships 16, 17, Range 4, Township 17, Range 3, the Towns of Van Buren, Cyr, Connor, Caswell, Hamlin and all towns and townships north and west thereof in Aroostook County;
- B. District No. 2. All the towns and townships in Aroostook County not included in Districts Nos. 1 and 3;
- C. District No. 3. Mount Chase Plantation, Stacyville Plantation, the Town of Patten and Township 2, Range 6, in Penobscot County, and Township 8, Range 5, Township 8, Range 4, Township 8, Range 3, Township C, Range 2, the Town of Monticello and all the towns and townships south thereof in Aroostook County;
- D. District No. 4. All the remaining counties, towns and townships in the State not included in Districts 1, 2 and 3.

4. Export. "Export" means shipment of potatoes beyond the boundaries of continental United States.

5. Fiscal year. "Fiscal year" means the period beginning July 1st of each year and ending June 30th of the following year.

6. Grade. "Grade" means one of the officially established grades of potatoes and "size" means any one of the officially established sizes of potatoes, as defined and set forth in:

- A. The United States Standards for Potatoes issued by the Department of Agriculture on September 10, 1941, effective June 1, 1942 (12 F. R. 3651), or amendments thereto, or modifications thereof, or variations based thereon;
- B. United States Consumer Standards for Potatoes as issued by the United States Department of Agriculture on November 3, 1947, effective December 8, 1947 (12 F. R. 7281), or amendments thereto, or modifications thereof, or variations based thereon;
- C. State of Maine Standards for Potatoes issued by the commissioner in accordance with section 951. [1979, c. 541, Pt. A, §62 (AMD).]

[1979, c. 541, Pt. A, §62 (AMD) .]

7. Handler. "Handler" is synonymous with shipper and means any person, except a common or contract carrier of potatoes owned by another person, who ships potatoes in fresh form or packs or prepares potatoes for market.

8. Person. "Person" means an individual, partnership, corporation, association, legal representative or any organized group or business unit.

9. Potatoes. "Potatoes" means all Irish potatoes grown within the State which retain the same physical form as possessed when harvested. The effects of the following operations shall not be considered as changing the physical form possessed by potatoes when harvested: Washing with or without chemicals; drying for the removal of surface moisture; slicing or cutting for seed purposes only; precooling, preheating, ventilating, humidifying or otherwise controlling atmospheric conditions in storage; treating with chemical formulations for sprout inhibition; waxing, packaging or otherwise preparing potatoes for marketing in what is generally considered to be fresh form.

[1971, c. 600, §1 (AMD) .]

10. Potatoes prepared for market. "Potatoes prepared for market" means and includes all potatoes packed in containers and intended for delivery or in transit or exposed for sale or in the process of delivery or in transit or located at a depot, station, boat dock or any place where potatoes are held in storage or for immediate or future sale or transit.

11. Producer. "Producer" means any person engaged in the production of potatoes for market.

12. Seed potatoes. "Seed potatoes" means and includes all potatoes officially certified and tagged, marked or otherwise appropriately identified, under the supervision of the official seed potato certifying agency of the State.

13. Ship or handle. "Ship" or "handle" means to transport, sell or in any other way to pack or prepare potatoes for market.

14. Table stock potatoes. "Table stock potatoes" means and includes all potatoes not included within the definition of "seed potatoes".

15. Varieties. "Varieties" means and includes all classifications or subdivisions of Irish potatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

16. Wholesale pack. "Wholesale pack" means a unit of 50 pounds net weight or more of potatoes contained in a bag, crate or any other type of container.

SECTION HISTORY

1965, c. 513, §9 (AMD). 1971, c. 600, §1 (AMD). 1979, c. 541, §§A61,A62 (AMD). 1981, c. 154, §§2,3 (RP). 1981, c. 513, §11 (AMD). RR 1999, c. 2, §9 (COR). 1999, c. 668, §69 (AMD).

§994. ADMINISTRATION

The commissioner shall administer and enforce sections 991 to 994 and has and may exercise any or all of the administrative powers conferred upon the head of a department of the State. In order to effectuate the declared purposes of said sections, the commissioner is authorized to issue, administer and enforce the marketing orders regulating the marketing of potatoes within the State. [1999, c. 2, §10 (COR).]

Whenever the commissioner has reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of sections 991 to 994, the commissioner shall, in a manner consistent with the rule-making provisions of the Maine Administrative Procedure Act, either upon the commissioner's own motion or upon application of any producer or handler of potatoes, give due notice of and an opportunity for a public hearing upon a proposed marketing order. [1999, c. 2, §10 (COR).]

Due notice of any hearing called for such purpose must be given to all persons who may be directly affected by any action of the commissioner pursuant to sections 991 to 994 and whose names appear upon lists to be filed with the commissioner. Such hearing must be open to the public. All testimony must be received under oath and a full and complete record of all proceedings at any such hearing must be made and filed by the commissioner at the commissioner's office. [1999, c. 2, §10 (COR).]

In order to effectuate the declared policy of sections 991 to 994, the commissioner has the power, after due notice and opportunity for hearing, to enter into marketing agreements with handlers, producers and others engaged in the handling of potatoes, regulating the preparation, sale and handling of potatoes, which said marketing agreement is binding upon the signatories thereto exclusively. The execution of such marketing agreement may in no manner affect the issuance, administration or enforcement of any marketing order provided for in sections 991 to 994. The commissioner may issue such marketing order without executing a marketing agreement or may execute a marketing agreement without issuing a marketing order covering the same subject matter. The commissioner, in the commissioner's discretion, may hold a concurrent hearing upon a proposed marketing agreement and a proposed marketing order in the manner provided for giving due notice and opportunity for hearing for a marketing order as provided in sections 991 to 994. [1999, c. 2, §10 (COR).]

After such notice and hearing, the commissioner may issue a marketing order if the commissioner finds it will tend to effectuate the declared policy of sections 991 to 994, subject to the following: [1999, c. 2, §10 (COR).]

1. Approved by 2/3 of producers participating in referendum. No marketing order or amendment thereto issued pursuant to sections 991 to 994 may become effective unless and until the commissioner determines that the issuance of such order is approved and favored by at least 2/3 of the producers who participated in a referendum on the question of its approval and who, during the preceding fiscal year, have been engaged in the production of potatoes for market within the production area specified in such marketing order, and who, during such year, have produced at least 2/3 of the volume of potatoes produced for market within such production area specified herein by all producers who participated in the said referendum.

[1999, c. 2, §10 (COR) .]

2. Assent of handlers. No marketing agreement or amendment thereto, directly affecting handlers, issued pursuant to sections 991 to 994, may become effective unless and until the commissioner finds that such agreement has been assented to in writing by the handlers who handle not less than 50% of the volume of the potatoes handled within the area defined in such agreement and by not less than 50% of the number of handlers engaged in handling potatoes within such area.

[1999, c. 2, §10 (COR) .]

SECTION HISTORY

1977, c. 694, §91 (AMD). 1981, c. 154, §§2,3 (RP). 1981, c. 513, §11 (AMD). RR 1999, c. 2, §10 (COR).

§995. POTATO MARKETING COMMITTEE

(REPEALED)

SECTION HISTORY

1979, c. 541, §B7 (AMD). 1981, c. 154, §§2,3 (RP). 1981, c. 513, §11 (AMD). 1983, c. 812, §§46,47 (AMD). 1989, c. 503, §B43 (AMD). 1999, c. 668, §70 (RP).

§996. EXPENSES AND ASSESSMENTS

(REPEALED)

SECTION HISTORY

1981, c. 154, §§2,3 (RP). 1981, c. 513, §11 (AMD). 1999, c. 668, §71 (RP).

§997. REGULATION

(REPEALED)

SECTION HISTORY

1977, c. 694, §§92-96 (AMD). 1999, c. 668, §72 (RP).

§998. CONTROL OF SURPLUS

(REPEALED)

SECTION HISTORY

1977, c. 694, §97 (AMD). 1981, c. 154, §§2,3 (RP). 1981, c. 513, §11 (AMD). 1999, c. 668, §73 (RP).

§999. CHANGE OF REGULATIONS

(REPEALED)

SECTION HISTORY

1977, c. 694, §98 (AMD). 1981, c. 154, §§2,3 (RP). 1981, c. 513, §11 (AMD). 1999, c. 668, §73 (RP).

§1000. REPORTS

(REPEALED)

SECTION HISTORY

1981, c. 154, §§2,3 (RP). 1981, c. 513, §11 (AMD). 1999, c. 668, §73 (RP).

§1001. COMPLIANCE

(REPEALED)

SECTION HISTORY

1981, c. 154, §§2,3 (RP). 1981, c. 513, §11 (AMD). 1999, c. 668, §73 (RP).

§1002. TERMINATION OR CHANGE OF MARKETING ORDERS

(REPEALED)

SECTION HISTORY

1977, c. 694, §99 (AMD). 1981, c. 154, §§2,3 (RP). 1981, c. 513, §11 (AMD). 1999, c. 668, §73 (RP).

§1003. EFFECT OF TERMINATION OR AMENDMENT

(REPEALED)

SECTION HISTORY

1981, c. 154, §§2,3 (RP). 1981, c. 513, §11 (AMD). 1999, c. 668, §73 (RP).

§1004. DURATION OF IMMUNITIES

(REPEALED)

SECTION HISTORY

1981, c. 154, §§2,3 (RP). 1981, c. 513, §11 (AMD). 1999, c. 668, §73 (RP).

§1005. PERSONAL LIABILITY OF COMMITTEE MEMBER

(REPEALED)

SECTION HISTORY

1981, c. 154, §§2,3 (RP). 1981, c. 513, §11 (AMD). 1999, c. 668, §73 (RP).

§1006. PENALTIES

(REPEALED)

SECTION HISTORY

1977, c. 696, §83 (AMD). 1981, c. 154, §§2,3 (RP). 1981, c. 513, §11 (AMD). 1999, c. 668, §73 (RP).

§1006-A. PENALTIES

A person who violates a provision of sections 991 to 994 or a provision of a marketing order duly issued by the commissioner commits a civil violation for which a forfeiture of not less than \$100 nor more than \$500 may be adjudged. Each day during which a violation continues constitutes a separate offense. [2001, c. 421, Pt. B, §8 (NEW); 2001, c. 421, Pt. C, §1 (AFF).]

SECTION HISTORY

2001, c. 421, §B8 (NEW). 2001, c. 421, §C1 (AFF).

§1007. DUMPING OF WASTE POTATOES

(REPEALED)

SECTION HISTORY

1995, c. 261, §1 (RP).

§1007-A. IMPROPERLY MAINTAINING CULL POTATO PILES; PUBLIC NUISANCE

1. Declaration of public nuisance. The Legislature declares that the A2 strain of late blight and other potato diseases constitute a clear and present danger to the potato industry in the State, which is a significant part of the State's economy. Control of the A2 strain of potato blight and other potato diseases requires the proper disposal of cull potato piles. The Legislature finds it necessary to exercise the police power of the State to require proper disposal of cull potatoes and cull potato piles and to provide procedures for the disposal of these potatoes by the department when the responsible party fails to comply with the requirements of this section. In addition to constituting a civil violation as prescribed in this section, cull potato piles that are not managed and disposed of in accordance with these requirements are considered a public nuisance and are subject to action under Title 17, chapter 91.

[2007, c. 570, §1 (AMD) .]

1-A. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Cull potatoes" means:

- (1) Potatoes that are not marketable or usable for human consumption or as seed potatoes;
- (2) Potatoes that are used for animal feed;
- (3) The residue potatoes left in the field from commercial or seed potato production the preceding year; and
- (4) Potatoes that spoil while in storage. [2007, c. 570, §1 (NEW) .]

B. "Responsible party" means the owner or lessee of the property on which cull potatoes are found or another person determined to be responsible for the potatoes in accordance with rules adopted under subsection 3. [2007, c. 570, §1 (NEW) .]

[2007, c. 570, §1 (NEW) .]

2. Disposal requirements; maintenance of cull potato piles. The commissioner shall adopt rules in accordance with subsection 3 to prescribe acceptable methods for disposal of cull potatoes and establish best management practices for maintaining cull potato piles. Except as provided in rules adopted under subsection 3, all cull potatoes must be properly disposed of on or before June 10th of each year. A person who keeps a

pile of cull potatoes shall maintain the pile in accordance with best management practices. Upon inspection authorized under subsection 4, the commissioner may determine site-specific best management practices for a pile of cull potatoes and order the responsible party to comply with these practices.

[2007, c. 570, §1 (AMD) .]

3. Rules. The commissioner shall adopt any rules necessary to implement this section in accordance with the Maine Administrative Procedure Act, except that the commissioner may shorten or suspend the notice and hearing requirements as necessary to respond to an imminent threat of disease. The commissioner shall adopt a set of best management practices for the maintenance of cull potato piles between June 10th and October 1st and may adopt a different set of best management practices applicable to piles maintained between October 1st of one year and June 10th of the following year. The commissioner may use emergency rulemaking to temporarily vary:

A. The dates established in subsection 2 when circumstances require that cull potatoes be disposed of prior to the June 10th date to prevent or minimize the spread of disease; [2007, c. 570, §1 (NEW) .]

B. The dates established in subsection 2 when weather or economic circumstances allow an extension of the time period during which cull potato piles may be maintained without significantly increasing the threat of disease; and [2007, c. 570, §1 (NEW) .]

C. The best management practices prescribed for maintaining cull potato piles when these practices are found inadequate to protect against an imminent threat. [2007, c. 570, §1 (NEW) .]

Except in an emergency, the commissioner shall consult with the Maine Potato Board prior to adopting rules under this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 570, §1 (AMD) .]

4. Department action. The commissioner may take action to properly dispose of or manage cull potatoes and cull potato piles that violate the requirements of this section or any rules of the commissioner adopted to implement this section. The commissioner or the commissioner's designee is authorized to enter any property to inspect cull potato piles and to take any action required to secure their proper disposal or management. Designated representatives of the commissioner may, without search warrant, enter at reasonable times any real property, other than a building, where potatoes are grown, stored, packed, loaded for shipment or handled, and may enter any building, either with the consent of the owner, lessee, occupant or agent or pursuant to an administrative search warrant. Notwithstanding the Maine Rules of Civil Procedure, Rule 80E, paragraph (b), the commissioner or the commissioner's designee may obtain an administrative search warrant pursuant to this section by describing the premises to be entered and the purpose of the inspection or other authorized action and by demonstrating that the entry is necessary in order to inspect potato cull piles or otherwise carry out the requirements of this section. This demonstration is deemed to be a demonstration of probable cause.

The costs incurred by the department in removing and properly disposing of or managing cull potatoes and cull potato piles must be reimbursed by the responsible party or parties, each of whom is jointly and severally liable for those costs to the department. The department, its employees and agents and any person acting on behalf of the department are not liable for any action taken pursuant to this section.

[2007, c. 570, §1 (AMD) .]

5. Potato Cull Removal Fund. The Potato Cull Removal Fund is established to be used by the department to administer and enforce the provisions of this section and to pay any expenses of cull potato management, removal or disposal. The commissioner may receive funds from any source to be deposited

into this fund, which does not lapse. If at any time the balance of the fund falls below \$15,000, any penalties collected under this section must be deposited into the fund. Otherwise, penalties collected must be deposited into the General Fund.

[2007, c. 570, §1 (AMD) .]

6. Civil penalties. Any person who violates any of the requirements of this section or any rules adopted under this section commits a civil violation for which a fine of not more than \$1,000 for each violation, together with not more than \$1,000 for each succeeding day of a continuing violation, may be adjudged.

[2005, c. 512, §43 (AMD) .]

SECTION HISTORY

1995, c. 261, §2 (NEW). 1997, c. 538, §1 (RPR). 2005, c. 512, §43 (AMD). 2007, c. 570, §1 (AMD).

Article 2-A: MAINE POTATO PRICES

§1008. PURPOSE

(REPEALED)

SECTION HISTORY

1983, c. 582, §1 (NEW). 1983, c. 582, §4 (RP). 1983, c. 829, §2 (AMD). 1985, c. 450, (AMD). 1999, c. 668, §74 (RP).

§1008-A. DEFINITIONS

(REPEALED)

SECTION HISTORY

1983, c. 582, §1 (NEW). 1983, c. 582, §4 (RP). 1983, c. 829, §§3,4 (AMD). 1985, c. 450, (AMD). 1987, c. 434, §1 (AMD). 1999, c. 668, §75 (RP).

§1008-B. MAINE MARKETING ADVISORY BOARD

(REPEALED)

SECTION HISTORY

1983, c. 582, §1 (NEW). 1983, c. 582, §4 (RP). 1983, c. 829, §§5-7 (AMD). 1985, c. 295, §§24,25 (AMD). 1985, c. 450, (AMD). 1987, c. 434, §§2,3 (AMD). RR 1997, c. 2, §27 (COR). 1999, c. 668, §76 (RP).

§1008-C. DUTIES OF THE COMMISSIONER

(REPEALED)

SECTION HISTORY

1983, c. 582, §1 (NEW). 1983, c. 582, §4 (RP). 1983, c. 829, §§8-11 (AMD). 1983, c. 862, §§27,28 (AMD). 1985, c. 450, (AMD). 1999, c. 668, §77 (RP).

§1008-D. ENFORCEMENT OF MANDATORY MINIMUM PRICE

(REPEALED)

SECTION HISTORY

1983, c. 582, §1 (NEW). 1983, c. 582, §4 (RP). 1983, c. 829, §12 (RP).
1985, c. 450, (AMD).

§1008-E. CONTRACTS EXEMPTED*(REPEALED)*

SECTION HISTORY

1983, c. 582, §1 (NEW). 1983, c. 582, §4 (RP). 1983, c. 829, §12 (RP).
1985, c. 450, (AMD).

§1008-F. BUDGET*(REPEALED)*

SECTION HISTORY

1983, c. 582, §1 (NEW). 1983, c. 582, §4 (RP). 1983, c. 829, §13 (AMD).
1985, c. 450, (AMD). 1999, c. 668, §77 (RP).

§1008-G. PERSONAL LIABILITY OF BOARD MEMBER*(REPEALED)*

SECTION HISTORY

1983, c. 582, §1 (NEW). 1983, c. 582, §4 (RP). 1985, c. 450, (AMD).
1987, c. 434, §4 (AMD). 1999, c. 668, §78 (RP).

§1008-H. PENALTIES*(REPEALED)*

SECTION HISTORY

1983, c. 582, §1 (NEW). 1983, c. 582, §4 (RP). 1983, c. 829, §14 (RP).
1985, c. 450, (AMD).

§1008-I. BARREL REPLACED BY HUNDREDWEIGHT AS A MEASURE*(REPEALED)*

SECTION HISTORY

1989, c. 181, (NEW). 1999, c. 668, §79 (RP).

Article 3: LICENSING**§1011. PURPOSE**

The Legislature finds that the potato industry has a substantial and unique effect on the economy of the entire State and Aroostook County in particular. Large numbers of the people in the State are directly or indirectly dependent on the industry. Over the years the industry has experienced wide fluctuations in prices and quality of product. Such fluctuations have caused commensurate instability in the economy of a large portion of the State. To a great extent the well-being of the industry is dependent upon those persons engaged in the marketing of the potatoes and rotation crops grown by others and the manner in which their services are performed. The entire manner of marketing potatoes and rotation crops is unique and requires special consideration. [1997, c. 606, §1 (AMD).]

The Legislature intends through this legislation to exercise the police power of the State in order to protect and promote the general welfare of the potato industry and the people of the State and maintain and encourage fair and equitable practices in the handling, sale and storage of potatoes and rotation crops. Such stabilization of the potato industry will have the beneficial effect of improving the economy of the entire State. [1997, c. 606, §1 (AMD).]

SECTION HISTORY

1971, c. 366, (NEW). 1997, c. 606, §1 (AMD).

§1012. DEFINITIONS

As used in this Article, in addition to the meanings given to the terms set forth in section 993 which meanings are applicable to such terms when used in this Article, the following terms shall have the following meanings: [1971, c. 366, (NEW).]

1. Agent. "Agent" means any person who sells or distributes potatoes or rotation crops in commerce for or on behalf of producers or others and whose operations may include the planting, cultivating, harvesting, grading, packing and furnishing containers, supplies or other services.

[1997, c. 606, §2 (AMD) .]

2. Applicant. "Applicant" means any person applying for a license under this Article.

[1971, c. 366, (NEW) .]

3. Broker. "Broker" means any person engaged in the business of negotiating sales of potatoes in commerce for or on behalf of the seller or the purchaser, respectively. The term "broker" shall apply to nonresidents of this State who carry on such business in this State, whether such "broker" is licensed in the state of his residence or not.

[1981, c. 513, §8 (AMD) .]

4. Buyer. "Buyer" means any person other than a consumer who purchases or contracts to purchase potatoes or rotation crops.

[1997, c. 606, §2 (AMD) .]

5. Dealer. "Dealer" means any person engaged in the business of buying or selling potatoes or rotation crops in wholesale or jobbing quantities in commerce and includes:

A. Jobbers, distributors and other wholesalers; [1997, c. 606, §3 (AMD).]

B. Producers who buy and resell potatoes or rotation crops grown by others in wholesale or jobbing quantities; and [1997, c. 606, §3 (AMD).]

C. Nonresidents of this State who carry on the business of buying and selling potatoes or rotation crops in this State, whether such dealer is licensed in that dealer's state of residence or not. [1997, c. 606, §3 (AMD).]

The term "dealer" does not include persons buying potatoes or rotation crops for canning or processing, or both, within this State and persons buying potatoes or rotation crops for sale primarily to consumers.

[1997, c. 606, §3 (AMD) .]

6. Licensed federal-state potato inspector. "Licensed federal-state potato inspector" means an authorized representative of the Federal-State Inspection Service.

[1971, c. 366, (NEW) .]

7. Licensee. "Licensee" means any person who holds an unrevoked and valid unsuspended license issued under this Article.

[1971, c. 366, (NEW) .]

8. Maine Potato Council.

[1991, c. 837, Pt. A, §18 (RP) .]

9. Retailer. "Retailer" means a person engaged in the business of buying potatoes or rotation crops in wholesale or jobbing quantities and reselling the potatoes or rotation crops bought primarily to consumers through at least 5 retail outlets located within or without the State.

[1997, c. 606, §4 (AMD) .]

9-A. Rotation crop. "Rotation crop" means small grain, soybean or flax grown in rotation with potatoes.

[1997, c. 606, §5 (NEW) .]

10. Sale. "Sale" includes every contract of purchase or sale, contract to purchase or sell, purchase, sale and disposition of potatoes or rotation crops for value.

[1997, c. 606, §6 (AMD) .]

11. Seller. "Seller" means any person who sells or contracts to sell potatoes or rotation crops in the regular course of business.

[1997, c. 606, §6 (AMD) .]

12. Verified complaint. "Verified complaint" means a writing signed by a person, who, under oath, swears that he has reason to believe that a person required to be licensed under this Article has violated one or more of the provisions of this Article or of the rules and regulations promulgated thereunder, setting forth a short and plain statement of the allegations which are the basis for such belief.

[1971, c. 366, (NEW) .]

13. Wholesale or jobbing quantities. "Wholesale or jobbing quantities" means aggregate quantities of potatoes totalling 25 tons, that is, 50,000 pounds, or more in weight purchased or contracted to be purchased in any calendar month.

[1979, c. 541, Pt. A, §63 (AMD) .]

14. Processor. "Processor" means any person other than a consumer who purchases or contracts to purchase potatoes or rotation crops primarily for manufacture into articles of food or starch by operations that change the physical form the potatoes or rotation crops possessed when harvested. The effects of the following operations are considered as changing the physical form possessed by potatoes or rotation crops

when harvested: Chopping, slicing, cutting, dicing, mashing, removal of skin or peel, frying or otherwise cooking, freezing, canning, dehydrating or comparable methods of preparation for marketing in what is generally considered to be a processed form.

[1997, c. 606, §7 (AMD) .]

SECTION HISTORY

1971, c. 366, (NEW). 1971, c. 600, §§2-4 (AMD). 1975, c. 555, §1 (AMD). 1979, c. 541, §A63 (AMD). 1981, c. 513, §§8,9 (AMD). 1991, c. 837, §A18 (AMD). 1997, c. 606, §§2-7 (AMD).

§1013. RULES AND REGULATIONS

The commissioner shall, in a manner consistent with the Maine Administrative Procedure Act, make uniform rules and regulations for carrying out this Article. [1977, c. 694, §100 (AMD) .]

SECTION HISTORY

1971, c. 366, (NEW). 1977, c. 694, §100 (AMD).

§1014. LICENSING; AGENTS

No person shall act as a dealer, processor, broker, agent or retailer unless duly licensed as provided in this Article. Every person, before acting as a dealer, processor, broker, agent or retailer, shall file an application with the commissioner for a license to transact the business of a dealer, processor, broker, agent or retailer and such application shall be accompanied by the license fee provided in this Article. [1975, c. 555, §2 (AMD) .]

A person may not buy, solicit or negotiate the sale of any potatoes or rotation crops in this State as a representative of any dealer, processor, broker or retailer, unless such a representative has been so authorized by a duly licensed dealer, processor, broker or retailer in writing, and a copy of such authorization is filed with the commissioner, except where such representative conducts business in the office of the dealer, processor, broker or retailer. The commissioner must be notified in writing by the dealer, processor, broker or retailer immediately upon the termination of such authorization. [1997, c. 606, §8 (AMD) .]

SECTION HISTORY

1971, c. 366, (NEW). 1971, c. 600, §5 (AMD). 1975, c. 555, §2 (AMD). 1997, c. 606, §8 (AMD).

§1015. APPLICATION AND RENEWAL FOR LICENSE

The applicant shall file an application for a license or renewal of a license on forms as prescribed and furnished by the commissioner, which must contain the full name of the person applying for the license and, if the applicant is a corporation, partnership, association, exchange or legal representative, officer, director, partner or member of a corporation, partnership, association or exchange, all such names and positions. If the applicant is a foreign corporation, it shall certify that it is authorized to transact business in the State under former Title 13-A, chapter 12 or Title 13-C, chapter 15, and further state the principal business address of the applicant in the State or elsewhere, the address of all places of business in the State, and the name or names of the person or persons authorized to receive and accept service of lawful process upon the applicant within the State. All questions required to be answered in the application for licenses must be sworn to, and intentionally untruthful answers constitute the crime of perjury. [2005, c. 333, §1 (AMD) .]

Upon receipt of an initial application, the commissioner immediately shall cause notice of the application to be provided in a manner consistent with the provisions of the Maine Administrative Procedure Act as to adjudicatory proceedings and shall, in any case, cause a copy of the notice to be served upon the Maine Potato

Board. Any interested person has 30 days in which to file comments as to the applicant's qualifications, to request a hearing or to file a verified complaint with the commissioner as provided by this Article. [2005 , c. 333 , §1 (AMD) .]

This applicant shall satisfy the commissioner of that applicant's character, financial responsibility and good faith in seeking to engage in the business. The commissioner shall, after notice and opportunity for a hearing has been provided in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory proceedings, issue a license to an applicant if the commissioner is satisfied as to the applicant's qualifications, such license entitling the applicant to act in the capacity described in the license for a period of one year from the date of issuance. A license may not be granted to any applicant if such person or officer, director, partner, or member thereof, has been convicted in any state or federal court of any felony within 5 years of the date of the application. [2005 , c. 333 , §1 (AMD) .]

In order to insure the licensee's financial responsibility and to protect potato and rotation crop producers, the commissioner shall require the licensee to file a bond as a prerequisite to the issuance of a license. The bond must be in a form and amount satisfactory to the commissioner, but not less than \$50,000 nor more than \$300,000 in the case of dealers and brokers engaged in buying or selling either potatoes or rotation crops, but not both, not less than \$50,000 nor more than \$400,000 in the case of dealers and brokers engaged in buying and selling both potatoes and rotation crops, or not less than \$100,000 nor more than \$500,000 in the case of processors, payable to the commissioner in the commissioner's official capacity and conditioned on the full and prompt payment for all potatoes or rotation crops received or purchased from producers or other licensees during the effective period of the license. In the case of processors, the amount of bond required must be based on the licensee's anticipated monthly volume of purchases, but may be adjusted to reflect other federal escrow accounts or bond requirements met by the licensee that satisfy the purposes of this section. [2005 , c. 333 , §1 (AMD) .]

Each license must plainly state the name and business address or addresses of the licensee and must be posted in a conspicuous place in each office where the business is transacted. The fee for each license is \$100 annually. Such license may be renewed for successive periods of one year each upon payment of the renewal fee and the submission of an application demonstrating that the applicant continues to meet the requirements for licensing, including filing proof of financial responsibility. A license or license renewal issued expires on the 30th day of June following the date of issuance. The department is not required to provide notice and opportunity for a hearing as provided in the Maine Administrative Procedure Act when granting a license renewal. If the licensee desires to carry on business in more than one place within the State, the licensee shall procure additional copies of the license, certified by the commissioner, for each place where the business is to be conducted. The fee for each such additional certification is \$100. In the event a person required to be licensed under this section fails to renew that person's license or submit the annual proof of financial responsibility, the department shall promptly provide notice to members of the potato producing industry through the Maine Potato Board and an agricultural bargaining council. [2005 , c. 333 , §1 (AMD) .]

All fees collected under this Article must be paid to the Treasurer of State and credited to the Department of Agriculture, Conservation and Forestry for the administration of this Article and other expenses incident to the administration of the department, and must be expended by the commissioner for the purposes for which the department is created. If any of such fees are not expended during the year in which they are collected, the unexpended balance does not lapse, but must be carried as a continuing account and available for the purposes specified until expended. [2005 , c. 333 , §1 (AMD) ; 2011 , c. 657 , Pt. W , §5 (REV) .]

SECTION HISTORY

1971, c. 366, (NEW). 1971, c. 600, §6 (AMD). 1971, c. 622, §21 (AMD). 1975, c. 713, §1 (AMD). 1977, c. 694, §§101,102 (AMD). 1979, c. 127, §45 (AMD). 1979, c. 672, §A24 (AMD). 1983, c. 465, §1 (AMD). 1991, c. 837, §A19 (AMD). 1997, c. 388, §4 (AMD). 1997, c. 606, §9 (AMD). 2003, c. 344, §D1 (AMD). 2005, c. 333, §1 (AMD). 2011, c. 657, Pt. W, §5 (REV).

§1016. VERIFIED COMPLAINTS; INVESTIGATION

The commissioner or his duly authorized agent shall have full authority to investigate upon the verified complaint of any interested person, or on his own motion, the conduct and activities of any person applying for or holding a license as dealer, processor, broker, agent or retailer and for such purpose may examine the books and papers of any such person and may take testimony and affidavits thereon under oath. Any interested person who has filed a verified complaint may be a party of record to all proceedings had with regard thereto. [1975, c. 555, §3 (AMD).]

SECTION HISTORY

1971, c. 366, (NEW). 1975, c. 555, §3 (AMD).

§1017. VIOLATIONS

1. Acts enumerated. The commissioner or the commissioner's duly authorized agent may refuse to grant or renew a license, after notice and opportunity for a hearing is provided in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory proceedings, upon a finding that any of the following acts have existed within 2 years of the date of the filing of an application for license:

- A. That fraudulent charges or returns have been made by the applicant or licensee for the handling, sale or storage of potatoes or rotation crops, or for the rendering of any service in connection with the handling, sale or storage of potatoes or rotation crops; [1997, c. 606, §10 (AMD).]
- B. That the applicant or licensee has failed or refused to render a true account of sales, or to make a settlement thereon, within the time and in the manner required by this Article, or has failed or refused to pay for potatoes or rotation crops purchased by the applicant or licensee within 30 calendar days after acceptance of the potatoes or rotation crops; [1997, c. 606, §10 (AMD).]
- C. That the applicant or licensee has knowingly made any false material statement as to the condition, quality or quantity of potatoes or rotation crops received, handled, sold, purchased or stored by the applicant or licensee; [1997, c. 606, §10 (AMD).]
- D. That the applicant or licensee directly or indirectly has purchased for that applicant's or licensee's own account, potatoes or rotation crops received by the applicant or licensee upon consignment without prior authorization from consignor together with price fixed by consignor or without promptly notifying the consignor of such purchase. This does not prevent any dealer, processor, broker, agent or retailer, in order to close the day's business, from taking into account in the record of sales miscellaneous lots or parcels of potatoes or rotation crops remaining unsold, if such dealer, processor, broker, agent or retailer on the business day next following properly enters any such transaction in that applicant's or licensee's accounts; [1997, c. 606, §10 (AMD).]
- E. That the applicant or licensee has made any substantial misrepresentation as to the conditions of the market for potatoes or rotation crops; [1997, c. 606, §10 (AMD).]
- F. That the applicant or licensee has made fictitious sales or has defrauded or attempted to defraud a producer; [1997, c. 606, §10 (AMD).]
- G. That a dealer, processor, broker, agent or retailer to whom any consignment is made has reconsigned such consignment to another dealer, processor, broker, agent or retailer and has received, collected or charged by such means more than one commission for making the sale therefor for the consignor without written consent of such consignor; [1975, c. 555, §5 (AMD).]
- H. That the licensee knowingly made any false material statements in the procurement of such license; [1971, c. 366, (NEW).]
- I. That the applicant or licensee has not accounted promptly and properly to the producer with regard to any claim settled or collected by the applicant or licensee for such producer; [1997, c. 606, §10 (AMD).]

J. That the applicant or licensee has failed or refused, upon demand, to permit the commissioner or the commissioner's agents to make the investigations, examinations or audits as provided in this Article or that the applicant or licensee has removed or sequestered any books, records or papers necessary to any such investigations, examinations or audits, or has otherwise obstructed the same; [1997, c. 606, §10 (AMD).]

K. That the licensee has failed or refused to keep and maintain the records as required by this Article; [1971, c. 366, (NEW).]

L. That the applicant or licensee has committed any act or conduct with regard to the handling, sale or storage of potatoes or rotation crops whether of the same or different character than specified in this subsection, which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealings; [2005, c. 333, §2 (AMD).]

M. That the applicant or licensee has failed to deliver to the seller the confirmation required by section 1022 within the time specified; or [2005, c. 333, §2 (AMD).]

N. That the applicant or licensee has failed to maintain a bond to ensure financial responsibility to producers or other licensees as required under section 1015. [2005, c. 333, §2 (NEW).]

The District Court may, in a manner consistent with the Maine Administrative Procedure Act, suspend or revoke a license upon finding any of the enumerated violations within 2 years of the date of the filing of a complaint.

[2005, c. 333, §2 (AMD) .]

1-A. Mandatory nonrenewal.

[1983, c. 829, §15 (RP) .]

2. Conditional. Any order revoking or suspending a license may, within the discretion of the District Court be made conditional upon the settlement, adjustment or satisfaction of the consequence of the violation or violations as specified, and the operation of such an order may be deferred for such purpose. Any such order may contain provisions for modification or dismissal thereof upon presentation to the District Court of evidence that the matter of complaint has been settled, adjusted or withdrawn at any time before such order becomes final.

[1977, c. 694, §105 (AMD); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

3. Effective date. The commission of the acts enumerated in this section after September 23, 1971 constitutes a violation of this Article.

[1975, c. 555, §§4, 5 (AMD) .]

4. Notification of insufficient or no payment. Producers may notify the Department of Agriculture, Conservation and Forestry of insufficient or no payment for potatoes or rotation crops after acceptance by any processor, dealer, broker, agent or retailer in the State in violation of subsection 1, paragraph B.

A. The Commissioner of Agriculture, Conservation and Forestry or the commissioner's agent, upon notification by producers of insufficient or no payment, shall immediately investigate the complaint and shall, in a manner consistent with the provisions of the Maine Administrative Procedure Act as to adjudicatory proceedings, hold a hearing, unless such hearing is waived by the processor, dealer, broker, agent or retailer against whom the charge has been made. The processor, dealer, broker, agent or retailer accused of nonpayment shall provide the commissioner with a copy of the contract, if any, and all other materials and information to enable the commissioner to carry out the provisions of this section. Upon finding after investigation that the processor, dealer, broker, agent or retailer has violated the contract, express or implied, the commissioner may recover the proceeds of the bond required by section 1015 and

apply those proceeds against the amounts owed producers. In the event the bond proceeds are inadequate to cover the debts owed producers, the commissioner shall require the processor, dealer, broker, agent or retailer to post an additional bond sufficient to cover the remaining debt owed to the producer or producers.

(1) The commissioner, after determination upon a hearing of insufficient payment or nonpayment of debts owed to a producer, may require the licensee to formulate a schedule of payments to the producer that is satisfactory to the commissioner. The schedule of payments may not exceed a 30-day period.

(2) The licensee, who after a hearing is determined to be in default of payment to a producer, shall submit a payment schedule to the commissioner within one week from the commissioner's request for a payment schedule. In the event that the schedule of payment is not satisfactory to the commissioner, the commissioner shall establish the schedule of payment not to exceed a 30-day period.

(3) The commissioner shall file a complaint with the District Court seeking to suspend the license of any licensee who fails to conform to the payment schedule established in this section until the producer is paid the total claim to which the producer is entitled.

(4) Upon the filing of a complaint by the commissioner in the District Court, the licensee shall post a bond sufficient to cover the total claim owed the producer on the date on which the complaint is filed. The bond required for an appeal procedure may be waived by the District Court in the event that the bond required by the commissioner under section 1015 or this paragraph is valid and sufficient to cover the total claim owed the producer.

(5) Nothing in this section may be construed to prohibit a producer from seeking redress for insufficient payment or nonpayment from licensees in any court or in accordance with any federal procedure established to obtain redress. [2011, c. 657, Pt. W, §6 (REV); 2011, c. 691, Pt. D, §2 (AMD).]

[2011, c. 657, Pt. W, §§5, 6 (REV); 2011, c. 691, Pt. D, §2 (AMD) .]

SECTION HISTORY

1971, c. 366, (NEW). 1971, c. 622, §22 (AMD). 1975, c. 555, §§4,5 (AMD). 1975, c. 713, §2 (AMD). 1977, c. 694, §§103-108 (AMD). 1983, c. 336, §§1,2 (AMD). 1983, c. 582, §§2,4 (AMD). 1983, c. 829, §15 (AMD). 1991, c. 837, §A20 (AMD). 1997, c. 606, §§10,11 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2005, c. 333, §§2,3 (AMD). 2007, c. 499, §1 (AMD). 2011, c. 657, Pt. W, §§5, 6 (REV). 2011, c. 691, Pt. D, §2 (AMD).

§1018. HEARINGS

The commissioner shall conduct hearings pursuant to this Article in a manner consistent with the Maine Administrative Procedure Act and has full power to subpoena such witnesses and documents as he deems necessary. The Superior Court, on the petition of the commissioner, may issue summary process to enforce the lawful orders of the commissioner in these actions. [1977, c. 694, §109 (RPR).]

SECTION HISTORY

1971, c. 366, (NEW). 1977, c. 694, §109 (RPR).

§1019. NOTICE OF HEARING

(REPEALED)

SECTION HISTORY

1971, c. 366, (NEW). 1977, c. 694, §110 (RP).

§1020. DECISIONS**(REPEALED)**

SECTION HISTORY

1971, c. 366, (NEW). 1977, c. 694, §111 (RP).

§1021. APPEALS**(REPEALED)**

SECTION HISTORY

1971, c. 366, (NEW). 1977, c. 694, §112 (RP).

§1022. RECORDS OF TRANSACTIONS

1. Broker and dealer records. Every dealer and broker required to be licensed under this Article, upon having negotiated a sale of potatoes or rotation crops for others or upon having purchased potatoes or rotation crops from the producer, shall cause a record of that transaction to be made, and deliver a copy to the seller by depositing a record of transaction in the United States mail, postage paid, within 2 working days of negotiation of the sale, setting forth the following with reference to the handling, sale and storage of those potatoes or rotation crops:

- A. Date of sale; [1985, c. 506, Pt. A, §7 (RPR).]
- B. Name and address of producer; [1985, c. 506, Pt. A, §7 (RPR).]
- C. Name and address of seller; [1985, c. 506, Pt. A, §7 (RPR).]
- D. Name and address of buyer; [1985, c. 506, Pt. A, §7 (RPR).]
- E. Name and address of broker, if any; [1985, c. 506, Pt. A, §7 (RPR).]
- F. Name and address of handler, if any; [1985, c. 506, Pt. A, §7 (RPR).]
- G. Name and address of any person designated as a secured party on a financing statement naming the seller as debtor filed in accordance with Title 11, section 9-1501, covering the potatoes or rotation crops, if any; [1999, c. 699, Pt. D, §1 (AMD); 1999, c. 699, Pt. D, §30 (AFF).]
- H. Mode of transportation of shipment, if known; if unknown, this information must be provided to the seller prior to shipment; [1997, c. 606, §12 (AMD).]
- I. Name of carrier, if known; if unknown, this information must be provided to the seller prior to shipment; [1997, c. 606, §12 (AMD).]
- J. If there is a broker or a retailer involved in a transaction, point of final destination; [1985, c. 506, Pt. A, §7 (RPR).]
- K. Date of shipment; [1985, c. 506, Pt. A, §7 (RPR).]
- L. If there is a broker or a retailer involved in the transaction, contemplated date of arrival at final destination; [1985, c. 506, Pt. A, §7 (RPR).]
- M. Grade, size, weight and amount and other specifications; [1985, c. 506, Pt. A, §7 (RPR).]
- N. Price for the potatoes or rotation crops, per unit and total; [1997, c. 606, §12 (AMD).]
- O. Any deductions to be made from the proceeds for expenses to be borne by the seller or handler; [1985, c. 506, Pt. A, §7 (RPR).]
- P. All other essential details of the purchase or sale; and [1985, c. 506, Pt. A, §7 (RPR).]

Q. If there is a broker involved in the transaction, an itemized accounting that separately sets forth all charges in connection with the sale, including the brokerage fee, if any. [1997, c. 606, §12 (AMD) .]

[1999, c. 699, Pt. D, §1 (AMD); 1999, c. 699, Pt. D, §30 (AFF) .]

1-A. Processor records. Every processor licensed under this Article, upon having purchased potatoes or rotation crops from the producer, shall cause a record of the transaction to be made, and deliver promptly to the seller a copy of that record setting forth the following with reference to the handling, sale and storage of those potatoes or rotation crops:

- A. Date of sale; [1983, c. 465, §3 (NEW) .]
- B. Name and address of producer; [1983, c. 465, §3 (NEW) .]
- C. Name and address of buyer; and [1983, c. 465, §3 (NEW) .]
- D. Grade, size, weight and amount and other specifications. [1983, c. 465, §3 (NEW) .]

In addition, the processor shall, for each transaction, specify the price for the potatoes or rotation crops, per unit and total, and deliver that information to the producer within 10 business days of delivery and acceptance of the potatoes or rotation crops.

[1997, c. 606, §13 (AMD) .]

2. Guarantees. In any sale in which the buyer of such potatoes is a person required to be licensed by this article and has a place of business in this State except a retailer, any guarantees with regard to grade, size, weight or other specifications, made by the producer shall be deemed satisfied when the grade, size, weight or specifications, as certified by a licensed federal-state potato inspector, or seed potato inspector, after the potatoes have been or while they are being loaded for transit, equals or exceeds the grade, size, weight or other specifications of the potatoes stated in the record of transaction. Any producer making any such guarantees shall at all times prior to shipment have the option to determine whether or not the potatoes shall be inspected in accordance with this subsection. Any attempt by a dealer to coerce or influence a producer to forego an inspection shall be a civil violation subject to section 1028. Any agreement the effect of which is to deny the producer the right to satisfy the producer's guarantee obligations and any agreement conflicting with this subsection are void; provided that a producer waives any rights under this subsection or may sell potatoes under an agreement conflicting with this subsection when the record of transaction required by this article contains the following additional information:

- A. Name and address of the person to whom the dealer resold the potatoes and any other person to whom the producer is obligated, directly or indirectly, by making any guarantees with regard to grade, size, weight or other specifications; [1971, c. 600, §7 (NEW) .]
- B. Point of final destination for the shipment of potatoes; and [1989, c. 319, (AMD) .]
- C. Price for the potatoes, per unit at final destination. [1989, c. 319, (NEW) .]

A buyer or dealer who attempts to enforce or hold a producer liable under a guarantee obligation, when the potatoes have been inspected in accordance with this subsection, without supplying the information in paragraphs A, B and C commits a civil violation and shall be subject to section 1028.

[1989, c. 319, (AMD) .]

3. Waiver. In any sale by a producer in which the making of a record of such transaction is required by this Article and the name and address of the buyer are not set forth on such record, or if no such record of transaction is made or if a copy of the record of transaction is not delivered by depositing the copy in the United States mail, postage prepaid, addressed to the producer, prior to delivery of the potatoes or rotation

crops at the point of final destination, the producer is deemed not to have made any guarantees with regard to grade, size, weight or other specifications, and such omission by the buyer or broker or agent constitutes a waiver of any and all claims against the producer for breach of warranty, expressed or implied.

[1997, c. 606, §14 (AMD) .]

4. Copies of documentation. Before any change may be made in the agreed upon price, there shall be mutual agreement between the parties. The agreement must be verified in writing and, along with available documentation as to quality defects mailed to the seller within 2 working days of the availability of the documentation.

[1983, c. 336, §4 (NEW) .]

SECTION HISTORY

1971, c. 366, (NEW). 1971, c. 600, §§7,8 (AMD). 1979, c. 541, §A64 (AMD). 1983, c. 336, §§3,4 (AMD). 1983, c. 465, §§2,3 (AMD). 1985, c. 506, §A7 (AMD). 1989, c. 319, (AMD). 1997, c. 606, §§12-14 (AMD). 1999, c. 699, §D1 (AMD). 1999, c. 699, §D30 (AFF).

§1023. BROKERS AND AGENTS

1. Brokerage fee. The brokerage fee, if any, shall be an agreed upon percentage of the gross proceeds from the sale, exclusive of the costs of transportation, and shall be charged the seller only upon receipt of payment in full of said gross proceeds from the buyer.

[1971, c. 366, (NEW) .]

2. Duties of brokers. In addition to all the duties of the broker otherwise imposed by law or by agreement, the broker has the following duties.

A. The broker shall invoice the buyer, shall collect and remit to the seller and any secured party noted on the record of the transaction any and all sums due on account of the sale, and shall render an itemized accounting to the seller promptly upon receipt of payment, showing the true gross selling price, all brokerage fees deducted, and any other charges or expenses incurred in connection with the sale of the potatoes or rotation crops. Agreement to collect from the buyer and remit to the seller is not a guarantee by the broker that the buyer will pay for the potatoes or rotation crops purchased, unless there is a specific agreement by the broker that the broker will pay if the buyer does not pay. [1997, c. 606, §15 (AMD).]

B. The broker shall, to the best of the broker's ability, make all necessary arrangements to effect the transportation of said shipment to the buyer, but the broker, in the absence of a specific agreement, does not guarantee the carrier payment of carrier charges. [1997, c. 606, §15 (AMD).]

C. The broker shall prepare, file and fully process with the carrier any and all claims for the seller of the potatoes or rotation crops, including taking all necessary action to bring the matter to a conclusion. [1997, c. 606, §15 (AMD).]

[1997, c. 606, §15 (AMD) .]

3. Agents contracts. A person required to be licensed by this Article may not act as an agent for any grower without first having an agreement with the grower reduced to a written contract clearly defining the duties and responsibilities of both parties, the extent of the agent's authority in distributing the potatoes or rotation crops, and the agent's fee or selling charge, if any.

[1997, c. 606, §16 (AMD) .]

4. Agent's fees. The agent's fee or selling charge shall be charged the seller only upon receipt from the buyer of payment in full of the gross proceeds from the sale.

[1971, c. 600, §9 (NEW) .]

5. Duties of agents. In addition to all the duties of the agent of any grower otherwise imposed by law, rule or regulation, or by agreement, the agent has the same duties as are imposed upon the broker by subsection 2, paragraphs A, B and C.

[1997, c. 606, §16 (AMD) .]

SECTION HISTORY

1971, c. 366, (NEW). 1971, c. 600, §9 (AMD). 1997, c. 606, §§15,16 (AMD).

§1024. EXEMPTIONS

1. Producers. Producers are exempt from this Article when selling potatoes or rotation crops that they have grown, that they are presently growing or that they intend to grow, except when acting as an agent.

[1997, c. 606, §17 (AMD) .]

2. Processors.

[1975, c. 555, §6 (RP) .]

3. Retailers. Retailers are exempt from this Article.

[1971, c. 600, §10 (NEW) .]

SECTION HISTORY

1971, c. 366, (NEW). 1971, c. 600, §10 (AMD). 1975, c. 555, §6 (AMD). 1997, c. 606, §17 (AMD).

§1025. FORFEITURE OF BOND; RECOVERY ON BOND

If any licensee fails to make such payment as provided in section 1017, subsection 1, paragraph B, such licensee, by reason of such nonpayment is in default as to all producers or licensees whose accounts remain unpaid, and the bond provided for is forfeited to the extent of all sums then due from such licensee to those producers or licensees, and by nature of such default, the conditions of such bond are deemed to be broken, and any such producer or licensee may bring an action on the defaulted bond in the name of the commissioner for the benefit of the producer or licensee. A producer or a licensee bringing an action against the bond must provide the department with notice of intent to file a claim within 30 days of the payment due date. A formal verified complaint and supporting documentation must be filed with the department within 90 days of the payment due date. [2005, c. 333, §4 (AMD) .]

The right of a producer or a licensee to bring an action against the bond is subject to the department's right to apply the proceeds of the bond against the producer's or licensee's debts in accordance with section 1017. [2005, c. 333, §4 (NEW) .]

SECTION HISTORY

1971, c. 366, (NEW). 1977, c. 696, §358 (AMD). 2005, c. 333, §4 (AMD).

§1026. ENFORCEMENT

The commissioner may recover the penalties imposed for violations of this Article and any rules and regulations promulgated thereunder in a civil action brought in the commissioner's own name, the venue to be as in other civil actions and, if the commissioner prevails in that action, the commissioner may recover full costs, including, but not limited to, attorney's fees. The commissioner is entitled to the assistance of the Attorney General and of the several district attorneys. [2005, c. 333, §5 (AMD).]

SECTION HISTORY

1971, c. 366, (NEW). 1977, c. 696, §84 (RPR). 2005, c. 333, §5 (AMD).

§1027. JURISDICTION AND DISPOSAL OF FORFEITURES

The District Court and the Superior Court shall have concurrent jurisdiction of actions brought for violation of this Article or the rules and regulations promulgated thereunder. All penalties received under this Article by county treasurers shall be paid by them to the Treasurer of State for deposit in the General Fund. [1977, c. 696, §85 (RPR).]

SECTION HISTORY

1971, c. 366, (NEW). 1977, c. 696, §85 (RPR).

§1028. VIOLATIONS

Any person who shall violate any of the provisions of this Article, except section 1017, subsection 1, paragraph B, or shall neglect or refuse to comply with the provisions thereof or any rule or regulation promulgated hereunder shall be subject to the following civil penalties payable to the State to be recovered in a civil action: [1977, c. 696, §86 (RPR).]

1. First violation. For the first violation, a civil penalty not to exceed \$1,000; and

[1977, c. 696, §86 (NEW) .]

2. Subsequent violation. For each subsequent violation, a civil penalty not to exceed \$2,000.

[1977, c. 696, §86 (NEW) .]

Each day a violation under this section remains uncorrected may be counted as a separate offense. Penalties may be imposed for each violation. [2005, c. 333, §6 (NEW).]

SECTION HISTORY

1971, c. 366, (NEW). 1977, c. 696, §86 (RPR). 2005, c. 333, §6 (AMD).

Article 3-A: LICENSING FIRST HANDLERS**§1029. PURPOSE**

(REPEALED)

SECTION HISTORY

1983, c. 582, §3 (NEW). 1983, c. 582, §4 (RP). 1983, c. 583, §4 (AMD).
1983, c. 829, §16 (RP). 1985, c. 450, (AMD).

§1029-A. DEFINITIONS

(REPEALED)

SECTION HISTORY

1983, c. 582, §3 (NEW). 1983, c. 582, §4 (RP). 1983, c. 829, §16 (RP).
1985, c. 450, (AMD).

§1029-B. AUTHORITY OF THE COMMISSIONER

(REPEALED)

SECTION HISTORY

1983, c. 582, §3 (NEW). 1983, c. 582, §4 (RP). 1983, c. 829, §16 (RP).
1985, c. 450, (AMD).

§1029-C. LICENSING FIRST HANDLERS

(REPEALED)

SECTION HISTORY

1983, c. 582, §3 (NEW). 1983, c. 582, §4 (RP). 1983, c. 583, §5 (AMD).
1983, c. 829, §16 (RP). 1985, c. 450, (AMD).

§1029-D. VIOLATIONS

(REPEALED)

SECTION HISTORY

1983, c. 582, §3 (NEW). 1983, c. 582, §4 (RP). 1983, c. 829, §16 (RP).
1985, c. 450, (AMD).

Article 4: MAINE POTATO QUALITY CONTROL

§1031. PURPOSE

(REPEALED)

SECTION HISTORY

1981, c. 513, §§10,12 (NEW). 1987, c. 99, §1 (AMD). 2005, c. 294, §15
(RP). 2005, c. 382, §A6 (RP).

§1032. DEFINITIONS

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings. [1981, c. 513, §167 (NEW).]

1. Board.

[1987, c. 99, §2 (RP) .]

2. Consumer pack. "Consumer pack" means a unit of 50 pounds or less net weight of potatoes contained in a bag or other type of container. Consumer pack shall not mean a master container.

[1981, c. 540, §2 (AMD) .]

2-A. Identification marks of bag manufacturers and bag distributors.

[1987, c. 99, §3 (RP) .]

3. Maine bag. "Maine bag" means any consumer pack for potatoes on which appears the word Maine in letters larger than 1/4 inch or a pictorial representation of the outline of the shape of the state.

[1981, c. 698, §15 (AMD) .]

4. Maine bag grade. "Maine bag grade" means any of the officially established grades of potatoes as adopted by the commissioner.

[1987, c. 99, §4 (AMD) .]

5. Other than Maine bag.

[1987, c. 99, §5 (RP) .]

SECTION HISTORY

1981, c. 513, §§10,12 (NEW). 1981, c. 540, §§2-5 (AMD). 1981, c. 698, §§14,15 (AMD). 1987, c. 99, §§2-5 (AMD).

§1033. MAINE POTATO QUALITY CONTROL BOARD

(REPEALED)

SECTION HISTORY

1981, c. 513, §§10,12 (NEW). 1983, c. 780, §§1,2 (AMD). 1983, c. 812, §§48,49 (AMD). 1987, c. 99, §§6-12 (AMD). 1989, c. 459, §§1,2 (AMD). 1989, c. 503, §B44 (AMD). 1991, c. 506, §3 (AMD). 1991, c. 837, §§A21,22 (AMD). 1999, c. 127, §A15 (AMD). 2001, c. 164, §1 (AMD). 2005, c. 294, §16 (RP).

§1033-A. DUTIES OF THE COMMISSIONER

1. Inspection fee. After considering the recommendations of the Maine Potato Board, and after considering available money appropriated from the General Fund, the commissioner shall set the inspection fee for potatoes packed in Maine bags pursuant to rules adopted pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375.

[2005, c. 294, §17 (AMD) .]

2. Statement of basis for fee. Upon request of the Maine Potato Board, the commissioner shall provide to the board and other interested parties a written statement of the basis for the fee established under this section.

[2005, c. 294, §17 (AMD) .]

3. Maine bag grades. Pursuant to the rule-making provisions of the Maine Administrative Procedure Act, the commissioner shall adopt the official grade or grades for potatoes to be packed in Maine bags. The commissioner shall prepare proposed rules. These rules as finally adopted become effective on August 1st, 1988 and may be amended only annually thereafter, with amendments becoming effective on August 1st of the year in which adopted. A Maine bag grade may not be less than United States No. 1.

[2005, c. 294, §17 (AMD) .]

SECTION HISTORY

1983, c. 780, §3 (NEW). 1987, c. 99, §§13,14 (AMD). RR 1997, c. 2, §28 (COR). 2005, c. 294, §17 (AMD).

§1034. INSPECTION

The Maine Potato Board may employ inspectors and may require payments for inspection at a rate and schedule to be established by rule by the commissioner. The commissioner shall develop proposed rules. [2005, c. 683, Pt. A, §11 (AMD).]

SECTION HISTORY

1981, c. 513, §§10,12 (NEW). 1987, c. 99, §15 (AMD). 2005, c. 294, §18 (AMD). 2005, c. 683, §A11 (AMD).

§1034-A. VARIETY LABELING

There is established a voluntary potato variety labeling program to provide consumers with accurate information on the varieties of potatoes that are available and to assist the industry in establishing markets for new varieties. [1989, c. 459, §3 (NEW).]

1. Rules. The commissioner shall adopt rules in accordance with Title 5, chapter 375 concerning the program, including, but not limited to, program participation, identification of the varieties of potatoes eligible for inclusion in the potato variety labeling program, requirements of the inspection of potatoes in the program and appropriate methods of labeling. A rule may not be adopted that requires the inspection of potatoes labeled by variety when the packer is not a participant in the potato variety labeling program.

[2003, c. 452, Pt. B, §13 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

2. Fees. The commissioner shall establish inspection fees for potatoes packed in bags labeled in accordance with the potato variety labeling program at a level 3¢ below the inspection fees established pursuant to sections 1033-A and 1034.

[1989, c. 459, §3 (NEW) .]

3. Violation. A participant in the potato variety labeling program may not pack potatoes in a bag labeled with the name of a different potato variety. For the purposes of this subsection, each load of potatoes constitutes a separate violation.

[2003, c. 452, Pt. B, §14 (RPR); 2003, c. 452, Pt. X, §2 (AFF) .]

4. Sunset.

[1991, c. 506, §4 (RP) .]

5. Penalties. The following penalties apply to violations of this section.

A. A person who violates subsection 3 commits a civil violation for which a fine of not more than \$1,000 may be adjudged. [2003, c. 452, Pt. B, §15 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

B. A person who violates subsection 3 after having previously violated subsection 3 commits a civil violation for which a fine of not more than \$2,000 may be adjudged. [2003, c. 452, Pt. B, §15 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

[2003, c. 452, Pt. B, §15 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

1989, c. 459, §3 (NEW). 1991, c. 506, §4 (AMD). 2003, c. 452, §§B13-15 (AMD). 2003, c. 452, §X2 (AFF).

§1035. MAINE BAG LOGO**(REPEALED)**

SECTION HISTORY

1981, c. 513, §§10,12 (NEW). 1981, c. 540, §6 (AMD). 1987, c. 99, §16 (RPR). 2005, c. 294, §19 (RP).

§1036. PACKING AND INSPECTION; SHIPPING PENALTY; ENFORCEMENT

1. Packing and inspection. No person may pack potatoes in a Maine bag, unless he has given notice of intent to pack to the department, in such form as the department may require.

[1987, c. 99, §17 (AMD) .]

2. Shipping. No packer, shipper, dealer or broker shall prepare for market, send to market or arrange for the sale of, or have possession or control of any potatoes in a Maine bag which have not been determined at point of origin by a duly authorized inspector to have met the standards required by this article. For the purposes of this subsection, the production of an unrestricted, original certificate of inspection covering the entire manifest, or an original or copy of a certificate of inspection positively identifying the actual bags or containers in question shall be deemed to satisfy the requirements of this subsection. The commissioner may promulgate rules consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, to designate other circumstances which will be deemed to satisfy the requirements of this subsection.

[1987, c. 754, §4 (RPR) .]

2-A. Other than Maine bag. No person may pack potatoes in any consumer pack on which the word "Maine" appears unless the pack is a Maine bag, except that the word "Maine" may appear on any consumer pack if it is the name and address of a producer, packer or any other person at the bottom of the pack and in letters not taller than 1/4 inch.

[1987, c. 99, §18 (NEW) .]

3. Penalty. Any person who violates subsection 1 or 2-A is subject to section 957 and any person who violates subsection 2 is subject to the following civil penalties and administrative action:

A. For the first violation, a forfeiture of \$500; [1987, c. 754, §5 (NEW) .]

B. For the 2nd violation, a forfeiture of \$1,000; and [1987, c. 754, §5 (NEW) .]

C. For the 3rd and subsequent violations, no less than \$1,500. [1993, c. 699, §6 (AMD) .]

After notice and an opportunity for hearing in an adjudicatory proceeding in accordance with the Maine Administrative Procedure Act, the commissioner may order a person the commissioner finds has violated subsection 2 3 or more times in a shipping season to undergo mandatory inspection in the manner provided in section 446 for a period of one year from the date of the final administrative determination. If the inspection order is stayed during appeal of the administrative determination, the period of the stay is not counted in calculating the one-year period. A person subject to mandatory inspection under this subsection may not ship potatoes packed in consumer packs unless the packs are accompanied by an unrestricted, original certificate of inspection covering the entire manifest, or an original or a copy of a certificate of inspection positively identifying the actual bags or containers in the shipment. Shipment of potatoes without the certificate required by this subsection is a separate violation subject to the penalties provided by this subsection.

[1993, c. 699, §6 (AMD) .]

SECTION HISTORY

1981, c. 513, §§10,12 (NEW). 1987, c. 99, §§17,18 (AMD). 1987, c. 754, §§4,5 (AMD). 1993, c. 699, §6 (AMD).

§1036-A. EXEMPTION

The requirements of this article do not apply to identification marks of bag manufacturers and bag distributors. [1987, c. 99, §19 (NEW).]

SECTION HISTORY

1987, c. 99, §19 (NEW).

§1037. INSPECTOR LICENSING

1. License. The commissioner may establish standards for licensing potato inspectors for the purposes of this subchapter, conduct examinations to license and license successful applicants; provided that the commissioner may determine not to license such private inspectors if he finds that the volume of potatoes inspected by the federal-state inspection service is insufficient to reasonably and efficiently sustain the availability at the federal-state inspection service in the State. The commissioner shall charge a fee of \$10 for taking the examination and \$15 for a license. A license shall be for 2 years and may be renewed.

[1981, c. 513, §§10, 12 (NEW) .]

2. Fees. All fees collected under this section shall be paid immediately to the Treasurer of State and credited to the department for the administration of this section and other expenses incident to the administration of this subchapter. If any fees are not spent during the year in which they are collected, the unexpended balance shall not lapse, but shall be carried as a continuing account and available for the purpose specified until spent.

[1981, c. 513, §§10, 12 (NEW) .]

3. Revocation. The commissioner may refuse to renew and the District Court may revoke the license of an inspector upon finding that the inspector has knowingly falsified information relating to inspections or his application for a license.

[1981, c. 513, §§10, 12 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

SECTION HISTORY

1981, c. 513, §§10,12 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF).

Subchapter 11: SEEDS

§1041. TITLE

This subchapter shall be known and may be cited as the "Maine Seed Law."

§1042. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings. [1979, c. 541, Pt. A, §65 (AMD).]

1. Advertisement. "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the meaning of this subchapter.

2. Agricultural seeds. "Agricultural seeds" shall include the seeds of grass, forage, cereal and fiber crops and any other kinds of seeds commonly recognized within this State as agricultural or field seeds, and mixtures of such seeds, except seeds of cereals grown in Maine and sold directly from grower to grower and not labeled as seed.

3. Labeling. "Labeling" includes all labels and other written, printed or graphic representations, in any form whatsoever, accompanying and pertaining to any seed whether in bulk or in containers, and includes invoices.

4. Noxious-weed seeds. "Noxious-weed seeds" shall be divided into 2 classes, primary noxious-weed seeds and secondary noxious-weed seeds. The commissioner may, through promulgation of regulations, add to or subtract from the list of seeds included under either definition whenever he finds, after public hearing, that such additions or subtractions are within the respective definitions.

5. Person. "Person" shall include any individual, partnership, corporation, company, society or association.

6. Primary noxious-weed seeds. "Primary noxious-weed seeds" are the seeds of perennial weeds such as not only reproduce by seed, but also spread by underground roots or stems, and which, when established, are highly destructive and difficult to control by ordinary good cultural practice. In this State they are the seeds of Bindweed (*Convolvulus arvensis*), Quackgrass (*Agropyron repens*), Canada Thistle (*Cirsium arvense*), Nut Grass (*Cyperus esculentus*) and Wound Wort (*Stachys polustris*).

7. Secondary noxious-weed seeds. "Secondary noxious-weed seeds" are the seeds of such weeds as are very objectionable in fields, lawns or gardens, but can be controlled by good cultural practice. In this State they are the seeds of Dodder (*Cuscuta* spp.), Horsenettle (*Solanum carolinense*), Wild Mustard (*Brassica* spp.), Wild Garlic (*Allium vineale*), Wild Onion (*Allium canadense*), Wild Radish (*Raphanus raphanistrum*), Perennial Sowthistle (*Sonchus arvensis*), Corncockle (*Agrostemma githago*), Buckhorn Plantain (*Plantago lanceolata*) and Yellow Rocket (*Barbarea vulgaris*).

7-A. Tree and shrub seeds. "Tree and shrub seeds" shall include the seeds of woody plants commonly known and sold as tree and shrub seeds in this State.

[1969, c. 42, §2 (NEW) .]

8. Vegetable seeds. "Vegetable seeds" shall include the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seeds in this State.

9. Weed seeds. "Weed seeds" shall include the seeds of all plants other than other crop seed and pure seed and shall include noxious-weed seeds.

SECTION HISTORY

1969, c. 42, §2 (AMD). 1979, c. 541, §A65 (AMD).

§1043. LABEL REQUIREMENTS

Each container of agricultural, vegetable or tree and shrub seeds which is sold, offered for sale or exposed for sale within the State for sowing purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information: [1969, c. 42, §3 (AMD).]

1. Agricultural seeds. For agricultural seeds:

A. Commonly accepted name of kind or kind and variety of each agricultural seed component in excess of 5% of the whole and the percentage by weight of each in the order of its predominance. Where more than one component is required to be named, the word "mixture" or "mixed" shall be shown conspicuously on the label;

B. Lot number or other lot identification;

C. Origin, if known, of alfalfa, red clover and field corn, except hybrid corn. If the origin is unknown, that fact shall be stated;

D. Percentage by weight of all weed seeds;

E. The name and approximate number of each kind of secondary noxious-weed seed:

- (1) Per ounce in *Agrostis* spp., *Poa* spp., Rhodes grass, Bermuda grass, timothy, orchard grass, fescues, alsike and white clover, reed canary grass, Dallis grass, ryegrass, foxtail millet, alfalfa, red clover, sweetclovers, lespedezas, smooth brome, crimson clover, *Brassica* spp., flax, *Agropyron* spp. and other agricultural seeds of similar size and weight or mixtures within this group; and
- (2) Per pound in proso, Sudan grass, wheat, oats, rye, barley, buckwheat, sorghums, vetches and other agricultural seeds of a size and weight similar to or greater than those within this group or any mixtures within this group.

All determinations of noxious-weed seeds shall be subject to tolerances and methods of determination prescribed in the rules and regulations promulgated by the commissioner under this subchapter;

F. Percentage by weight of agricultural seeds, which may be designated as "crop seeds," other than those required to be named on the label;

G. Percentage by weight of inert matter;

H. For each named agricultural seed:

- (1) Percentage of germination, exclusive of hard seed;
- (2) Percentage of hard seed, if present;
- (3) "Total germination and hard seed" may be stated as such, if desired;
- (4) The calendar month and year the test was completed to determine such percentages;

I. Name and address of the person who labeled said seed or who sells, offers or exposes said seed for sale within this State.

2. Vegetable seeds. For vegetable seeds:

A. Name of kind and variety of seed;

B. For seeds which germinate less than the standard last established by the commissioner:

- (1) Percentage of germination, exclusive of hard seed;
- (2) Percentage of hard seed, if present;
- (3) The calendar month and year the test was completed to determine such percentages;
- (4) The words "Below Standard" in not less than 8-point type.

C. Name and address of the person who labeled said seed or who sells, offers or exposes said seed for sale within this State.

3. Tree and shrub seeds. For tree and shrub seeds:

A. Name of kind and variety; [1969, c. 42, §4 (NEW).]

B. The percentage by weight of pure seed; [1969, c. 42, §4 (NEW).]

C. The percentage of germination; [1969, c. 42, §4 (NEW).]

D. The year of collection of such seed; [1969, c. 42, §4 (NEW).]

E. The specific locality, state and county in the United States or nearest equivalent political unit in the case of foreign countries, in which the seed was collected. [1969, c. 42, §4 (NEW).]

F. Name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale within this State. [1969, c. 42, §4 (NEW).]

[1969, c. 42, §4 (NEW) .]

SECTION HISTORY

1969, c. 42, §§3,4 (AMD).

§1044. PROHIBITIONS

1. Test for germination; labels; ads; noxious weeds. It shall be unlawful for any person to sell, offer for sale or expose for sale any agricultural, vegetable or tree and shrub seeds within this State:

A. Unless the test to determine the percentage of germination required by section 1043 shall have been completed within a 9-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale or offering for sale or transportation;

B. Not labeled in accordance with this subchapter, or having a false or misleading label;

C. Pertaining to which there has been a false or misleading advertisement;

D. Containing primary noxious-weed seeds not in accordance with tolerances and methods of determination prescribed in the rules and regulations promulgated by the commissioner;

E. If noxious-weed seeds are present singularly or collectively in excess of 500 per pound.

[1969, c. 42, §5 (AMD) .]

2. Misuse of labels; false ads; obstructions; stop-sales. It shall be unlawful for any person within this State:

A. To detach, alter, deface or destroy any label provided for in this subchapter, or the rules and regulations promulgated by the commissioner thereunder, or to alter or substitute seed in any manner that may defeat the purposes of said subchapter;

B. To disseminate any false or misleading advertisement concerning agricultural, vegetable or tree and shrub seeds in any manner or by any means; [1969, c. 42, §6 (AMD).]

C. To hinder or obstruct in any way any authorized person in the performance of his duties under this subchapter;

D. To fail to comply with a "stop-sale" order.

[1969, c. 42, §6 (AMD) .]

SECTION HISTORY

1969, c. 42, §§5,6 (AMD).

§1044-A. LICENSING REQUIREMENTS

For the purpose of providing revenues to defray the expense of the inspection and analysis prescribed in this subchapter, the commissioner shall license seed labelers. The commissioner shall prescribe the license application form. License fees established under this subchapter may be collected on other than an annual basis if the license required in this section is issued in conjunction with a nursery operator's license issued under section 2171. [1999, c. 84, §2 (AMD).]

1. Retail dealer's license.

[1995, c. 435, §3 (AFF); 1995, c. 435, §2 (RP) .]

2. Seed labeling license. A person, firm or corporation may not label agricultural, vegetable and tree and shrub seeds, except seed potatoes, for planting purposes for distribution or sale in this State without having obtained a seed labeling license. The seed labeling licensee is responsible for the accuracy of the seed contents of all packages, boxes and bags of seeds labeled by the licensee. The fee for a seed labeling license is \$50 annually. A license may be issued for a one-year, 2-year or 3-year period. Licenses for a period in excess of one year may only be issued with the agreement of or at the request of the applicant. The fee for a 2-year license is 2 times the annual fee. The fee for a 3-year license is 3 times the annual fee.

[2005, c. 12, Pt. EEE, §2 (AMD) .]

3. Disposition of fees. Fees received for licenses established under this section shall be paid to the Treasurer of State for deposit in the General Fund.

[1979, c. 672, Pt. A, §25 (NEW) .]

SECTION HISTORY

1979, c. 672, §A25 (NEW). 1995, c. 435, §§1,2 (AMD). 1995, c. 435, §3 (AFF). 1997, c. 454, §3 (AMD). 1999, c. 84, §2 (AMD). 2005, c. 12, §EEE2 (AMD).

§1045. EXEMPTIONS AND VIOLATIONS

Sections 1043 and 1044 shall not apply to seed or grain not intended for sowing purposes, nor to seed in storage in, or consigned to, a seed cleaning or processing establishment for cleaning or processing. Any labeling or other representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this subchapter. [1977, c. 696, §87 (RPR).]

No person shall be deemed in violation of this subchapter for having sold or offered or exposed for sale in this State any agricultural vegetable or tree and shrub seed which were incorrectly labeled or represented as to kind, variety, type or origin, which seeds cannot be identified by examination thereof, unless he has failed to obtain an invoice or grower's declaration giving kind, or kind and variety, or kind and type, and origin if required, and to take such other precautions as may be necessary to insure the identity to be that stated. [1977, c. 696, §87 (RPR).]

Violation of this subchapter is a civil violation for which the following forfeitures may be adjudged. [1977, c. 696, §87 (RPR).]

1. First violation. For the first violation, a forfeiture not to exceed \$100; and

[1977, c. 696, §87 (NEW) .]

2. Subsequent violation. For each subsequent similar violation, a forfeiture not to exceed \$250.

[1977, c. 696, §87 (NEW) .]

SECTION HISTORY

1969, c. 42, §7 (AMD). 1977, c. 696, §87 (RPR).

§1046. DUTIES OF COMMISSIONER

It shall be the duty of the commissioner, who may act through his authorized agents:

1. Inspection. To sample, inspect, cause to be analyzed or tested, agricultural, vegetable or tree and shrub seeds transported, sold or offered or exposed for sale within this State for sowing purposes, at such time and place and to such extent as he may deem necessary to determine whether said agricultural, vegetable or tree and shrub seeds are in compliance with this subchapter, and to notify promptly of any violation, the person who transported, sold, offered or exposed the seed for sale;

[1969, c. 42, §8 (AMD) .]

2. Rules and regulations. To prescribe and, in a manner consistent with the Maine Administrative Procedure Act, to adopt rules and regulations governing the methods of sampling, inspecting, analysis, test and examination of agricultural, vegetable or tree and shrub seeds, and the tolerances to be followed, which shall be in general accord with officially prescribed practice in interstate commerce, and such other rules and regulations as may be necessary to secure the efficient enforcement of this subchapter.

[1977, c. 694, §113 (AMD) .]

SECTION HISTORY

1969, c. 42, §8 (AMD). 1977, c. 694, §113 (AMD).

§1047. POWERS

For the purpose of carrying out this subchapter, the commissioner or his duly authorized agents shall have authority:

1. Stop-sale orders. To issue and enforce a written or printed "stop-sale" order to the owner or custodian of any lot of agricultural, vegetable or tree and shrub seeds which the commissioner finds is in violation of any of the provisions of this subchapter, which order shall prohibit further sale of such seed until such officer has evidence that the law has been complied with. The issuance of such an order shall not be considered licensing or an adjudicatory proceeding, as defined by the Maine Administrative Procedure Act. No "stop-sale" order shall be issued or attached to any lot of seed without first giving the owner or custodian of such seed an opportunity to comply with the law. The owner or custodian of seeds which have been denied sale by a "stop-sale" order shall have the right to appeal from such order to a court of competent jurisdiction in the locality in which the seeds are found, praying for a judgment as to the justification of said order and for the discharge of such seed from the order. This subsection shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of this subchapter.

[1977, c. 694, §114 (AMD) .]

2. Employ qualified persons. To employ qualified persons under the Civil Service Law and to incur such expenses as may be necessary to carry out this subchapter; and

[1985, c. 785, Pt. B, §44 (AMD) .]

3. Cooperate with Federal Government. To cooperate with the Federal Government in seed law enforcement.

SECTION HISTORY

1969, c. 42, §9 (AMD). 1977, c. 694, §114 (AMD). 1985, c. 785, §B44 (AMD).

§1048. SEIZURE

Any lot of agricultural, vegetable or tree and shrub seeds not in compliance with this subchapter shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the locality in which the seed is located. In the event that the court finds the seed to be in violation of this subchapter,

and orders the condemnation of said seed, it shall be denatured, processed, destroyed, relabeled or otherwise disposed of as provided in this subchapter. In no instance shall the court order such disposition of seed without first having given the claimant an opportunity to apply to the court for the release of said seed or permission to process or relabel it to bring it into compliance with this subchapter. [1969, c. 42, §10 (AMD).]

SECTION HISTORY

1969, c. 42, §10 (AMD).

Subchapter 11-A: GENETICALLY ENGINEERED PLANTS AND SEEDS

§1051. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 330, §1 (NEW).]

1. Cross-contamination. "Cross-contamination" means the unintentional transfer and incorporation of genetic material between a genetically engineered crop, by cross-pollination or other means, and a nongenetically engineered crop or a wild plant population.

[2001, c. 330, §1 (NEW) .]

2. Genetically engineered. "Genetically engineered" means the application of in vitro nucleic acid techniques, including recombinant deoxyribonucleic acid and direct injection of nucleic acid into cells or organelles, or the fusion of cells beyond the taxonomic family, that overcome natural physiological reproductive or recombinant barriers and that are not techniques used in traditional breeding and selection.

[2007, c. 602, §1 (AMD) .]

3. Seed dealer. "Seed dealer" means a person who cleans, processes, sells or offers for sale a genetically engineered plant part, seed or plant in the State.

[2007, c. 602, §2 (AMD) .]

4. Manufacturer. "Manufacturer" means a person that produces or commercializes a genetically engineered plant part, seed or plant, not including a farm operation as defined in section 152, subsection 6.

[2009, c. 323, §1 (AMD) .]

4-A. Pharmaceutical or industrial crop. "Pharmaceutical or industrial crop" means a plant that has been genetically engineered to produce a medical or industrial product, including a human or veterinary drug, a biologic, industrial or research chemical, enzymes, vaccines, human antibodies and human blood proteins.

[2009, c. 388, §1 (NEW) .]

5. Technology use agreement. "Technology use agreement" means an agreement between a manufacturer and a farmer that controls the right to plant a given genetically engineered plant part, seed or plant on a specific area of land for a certain period of time.

[2007, c. 602, §4 (NEW) .]

SECTION HISTORY

2001, c. 330, §1 (NEW). 2007, c. 602, §§1-4 (AMD). 2009, c. 323, §1 (AMD). 2009, c. 388, §1 (AMD).

§1052. RESPONSIBILITIES OF MANUFACTURER

A manufacturer of genetically engineered plants, planting stock or seeds that present a risk of cross-contamination and are sold or distributed in this State is subject to the provisions of this subchapter. [2001, c. 330, §1 (NEW) .]

1. Instructions. The manufacturer or seed dealer of the genetically engineered plants, plant parts or seeds shall provide written instructions to all growers on how to plant the plant parts, seeds or plants and how to grow and harvest the crop to minimize potential cross-contamination. These instructions must be at least as inclusive as guidelines issued by the United States Department of Agriculture relative to the establishment of buffer zones between genetically engineered plants and wild or cultivated plants subject to the risk of cross-contamination. The manufacturer or seed dealer shall file a copy of these instructions with the commissioner at least 20 days in advance of any sale of the genetically engineered plants, plant parts or seeds in this State.

[2001, c. 330, §1 (NEW) .]

2. Record keeping. The manufacturer or seed dealer shall identify and maintain, for at least 2 years after the date of sale, a list of the names and addresses of all growers of its genetically engineered plants, plant parts or seeds in this State. The list is not a public record as defined in Title 1, section 402, subsection 3. A manufacturer or seed dealer shall permit the commissioner to inspect the list when requested to facilitate an investigation into a claim of cross-contamination. A manufacturer or seed dealer is not required to keep records on seeds sold at the retail level in packets weighing less than one pound.

A manufacturer of genetically engineered seeds is not required to keep records under this subsection when the required records are being kept by a seed dealer.

[2001, c. 330, §1 (NEW) .]

2-A. Reporting. A manufacturer selling genetically engineered plant parts, plants or seeds in the State shall annually report to the commissioner the total potential acreage at a given planting density of genetically modified crops that could be grown based on the amount of each genetically engineered product sold in the State. Individual manufacturer data received under this subsection is confidential and may not be made public. The commissioner shall make public aggregate data that does not reveal the sales activities of an individual manufacturer. The commissioner shall provide aggregate data on sales of genetically engineered trees, tree seedlings, tree seeds, tree scions and other propagative materials to the Department of Agriculture, Conservation and Forestry, Bureau of Forestry.

[2009, c. 323, §2 (NEW); 2011, c. 657, Pt. W, §§5, 7 (REV); 2013, c. 405, Pt. A, §23 (REV) .]

3. Violation; penalty. Failure to comply with this subchapter is a civil violation for which a penalty of not more than \$1,500 may be adjudged. In accordance with Title 5, chapter 375, the commissioner may suspend or revoke a license issued under section 1044-A if the holder of the license fails to comply with this subchapter.

[2001, c. 330, §1 (NEW) .]

SECTION HISTORY

2001, c. 330, §1 (NEW). 2009, c. 323, §2 (AMD). 2011, c. 657, Pt. W, §§5, 7 (REV). 2013, c. 405, Pt. A, §23 (REV).

§1053. DE MINIMUS POSSESSION AND VENUE

1. De minimus possession. If a genetically engineered product in which a manufacturer has rights is possessed by a farmer or found on the property owned or occupied by the farmer and the presence of the product is either de minimus or not intended by the farmer, the farmer is not liable for breach of a seed contract nor for any damages claimed by the manufacturer.

[2007, c. 602, §5 (NEW) .]

2. Venue. An infringement case brought against a grower who does not have a current technology use agreement with a manufacturer must be brought in a venue where the farmer resides or where the disputed crop was grown.

[2007, c. 602, §5 (NEW) .]

SECTION HISTORY

2007, c. 602, §5 (NEW).

§1054. RULEMAKING

The commissioner shall adopt rules to establish best management practices to maintain the integrity of crops and minimize potential conflict between farmers. Rules adopted under this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 602, §6 (NEW) .]

SECTION HISTORY

2007, c. 602, §6 (NEW).

§1055. RESTRICTIONS ON THE PRODUCTION OF PHARMACEUTICAL OR INDUSTRIAL CROPS

(REPEALED)

SECTION HISTORY

2009, c. 388, §2 (NEW). MRSA T. 7, §1055, sub-§4 (RP).

Subchapter 12: VINEGAR

§1081. DEFINITIONS

(REPEALED)

SECTION HISTORY

1979, c. 541, §A66 (AMD). 1979, c. 672, §A21 (RP).

§1082. SALES OF ADULTERATED OR MISBRANDED VINEGAR PROHIBITED

(REPEALED)

SECTION HISTORY

1979, c. 672, §A21 (RP).

§1083. ADULTERATION

(REPEALED)

SECTION HISTORY

1979, c. 672, §A21 (RP).

§1084. MISBRANDING**(REPEALED)**

SECTION HISTORY

1979, c. 672, §A21 (RP).

§1085. COMMON CARRIERS**(REPEALED)**

SECTION HISTORY

1977, c. 251, §2 (AMD). 1979, c. 672, §A21 (RP).

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